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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 233 210.

HENRY HOPKINS ET AL., APPELLANTS,

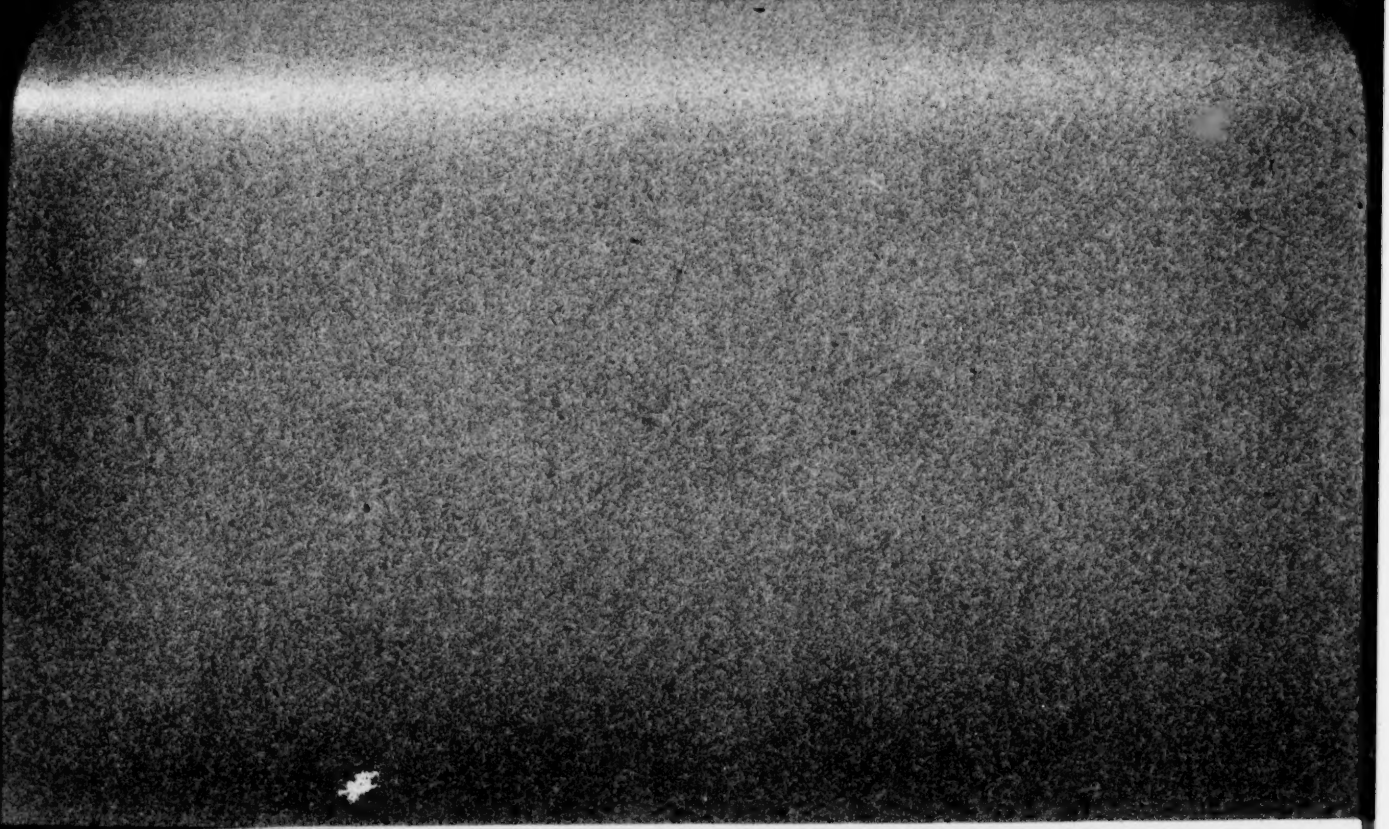
vs.

THE UNITED STATES.

ON CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

CERTIFICATE FILED DECEMBER 10, 1897.
CERTIORARI AND RETURN FILED JANUARY 11, 1898.

(16,746.)



(16,746.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

ON CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit at a term thereof begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, it being the sixth day of December, A. D. 1897, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable John F. Philips, district judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the fifth day of October, A. D. 1897, a transcript of record, in pursuance of an appeal allowed by the circuit court of the United States for the district of Kansas, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in a certain cause wherein Henry Hopkins *et al.* were appellants and The United States of America appellee; which said transcript of record is in the words and figures following, to wit:

a In the United States Circuit Court of Appeals, Eighth Circuit.

Henry Hopkins et al., Appellants,

v.

United States, Appellee.

STIPULATION AS TO PRINTING RECORD.

Pursuant to the provisions of the twenty-third rule of this court, the parties stipulate that in printing the record herein, the clerk shall omit the portions of the transcript certified by the clerk of the circuit court designated as follows:

1. The subpoena appearing on page 16 and the return of the marshal thereon appearing on page 17.

2. The notice of motion for preliminary injunction appearing on pages 18 and 19, and the return of the marshal thereon appearing on pages 20, 21 and 22.

3. In lieu of the amendment to the bill of complaint making new parties, on pages 25 and 26, it shall be stated on page 24, after the order of court permitting said amendment, that the same was duly made.

4. The praecipe appearing on page 26; and the chancery subpoena appearing on pages 27 and 28.

5. Those portions of Exhibit A to the affidavit of Norman B. Greer, consisting of cover and lists of officers appearing on pages 29, 30, 31 and 32; the list of members on lower half of page 49 and on page 50; and the index to said exhibit appearing on pages 51 and 52.

6. Those portions of Exhibit B to the affidavit of said Greer, consisting of the lower leaflet on page 53, being index.

7. The copy of the articles of association, rules and by-laws of the Kansas City Live Stock Exchange, attached
b to the defendants' answer and appearing on pages 119 to 166 both inclusive, the same being a repetition of Exhibit A, to the affidavit of Norman B. Greer, and to be printed as such.

8. The chancery subpoena and return thereon appearing on pages 177 and 178.

9. The Exhibit A to the affidavit of E. J. Rickes et al., appearing on pages 189 to 198 both inclusive, being wood

cuts of various members of said exchange, it being impossible to properly reproduce the same in print.

10. The copy of the articles of association, rules and by-laws of the Kansas City Live Stock Exchange appearing on pages 201 to 248 both inclusive.

11. The list of members of said exchange being Exhibit A to the affidavit of R. P. Woodbury appearing on page 253 and being a repetition of the list appearing on page 181.

12. The affidavit of J. M. Orr and the transcript thereto attached covering pages 359 to 423 both inclusive.

C. F. HUTCHINGS,
L. C. KRAUTHOFF,
For Appellants.
I. E. LAMBERT,
U. S. Atty. Kansas,
For Appellee.

No. 1002. Henry Hopkins et al., Appellants, vs. United States. Stipulation concerning printing of record. Filed Oct. 28, 1897. John D. Jordan, Clerk. Karnes, Holmes & Krauthoff, Attorneys at Law, Kansas City, Mo.

1 In the Circuit Court of the United States in and for the District of Kansas, First Division.

The United States of America, Plaintiff,
vs.
Henry Hopkins, A. Isaacson, F. X. Jardon, J. T. Kiely, A. J. Knollin, W. L. Ladd, T. F. McDonald, J. W. Orlander, M. S. Peters, O. C. Peters, Gilamn Reed, E. E. Richardson, W. A. Rogers, J. K. Southee, J. M. Sweeney, Henry Theis, E. E. Trowbridge, Harry Trower, O. B. Trower, S. R. Trower, Wm. Winder, R. H. Wise, L. M. Egan, Fred Ehrke, W. F. Grant, W. S. Hannah, J. H. Clotfelter, T. E. Ladd and Woodson McCoy, Defendants.

To the Honorable Judges of said Circuit Court:

The United States of America, by W. C. Perry, United States attorney for the District of Kansas, who acts in this behalf under the direction and by the authority of the Attorney General of the United States, brings this, its petition and bill of complaint against Henry Hopkins, A. Isaacson, F. X. Jardon, J. T. Kiely, A. J. Knollin, W. L. Ladd, T. F. McDonald, J. W. Orlander, M. S. Peters, O. C. Peters, Gilamn Reed, E. E. Richardson, W. A. Rogers, J. K. Southee, J. H. Clotfelter, L. M. Egan, Fred Ehrke, Harry Trower, O. B.

Trower, S. R. Trower, Wm. Winder, R. H. Wise, T. E. Ladd and Woodson McCoy, each of whom are citizens and residents of the State of Kansas, and thereupon your orator complains and gives the court to understand and be informed that each of the persons above named are now members of a voluntary unincorporated association known and designated as the "Kansas City Live Stock Exchange," and that they have each received a certificate evidencing a membership in said association; that said defendants and other persons not citizens or residents of the State of Kansas, who are also members of said association, have adopted so-called articles of association and rules and by-laws whereby they have agreed one with the other that they will faithfully [observed] and be bound by the same, and by such new rules and such
2 additions and amendments thereto as may from time to time be adopted by the association; that the government of said Kansas City Live Stock Exchange, by said articles of association, rules and by-laws, and by the consent of all said defendants, is vested in a board of eleven directors, all of whom are members of said exchange; that the officers of said exchange in addition to said directors, are president, vice-president, secretary and treasurer; that the business of said exchange is carried on and conducted by said board of directors and by said officers, with the consent, knowledge and approbation of the defendants as members of said exchange at the Kansas City Stock Yards, situated in the city of Kansas City, in the State of Missouri, and in the city of Kansas City, in the State of Kansas, and in a building owned by the Kansas City Stock Yards Company, said building being located so that one-half of it is located in said State of Missouri, and the other one-half thereof in the State of Kansas; that about one-half in number of said defendants have offices and transact business in said stock yards and in said building within the State of Kansas, and the other one-half of said defendants have offices and transact business at said building and stock yards in the State of Missouri.

And your orator further shows to the court that the Kansas City Stock Yards Company now is, and at all the times hereinafter referred to was, a corporation owning, controlling, operating and managing what is known as the Kansas City Stock Yards; that said stock yards are located on both sides of the state line between the States of Kansas and Missouri, and in Jackson county, Missouri, and in Wyandotte county, Kansas, and consist of yards, pens, chutes, railway tracks, sheds, weighing scales, the building hereinbefore referred to, and other means and appliances for receiving, yarding, feed-

ing, and shipping cattle, hogs and other live stock;
3 that said building contains a large number of rooms and offices for the accommodation of the officers of said stock yards company, which are by it operated and leased to members of said Kansas City Live Stock Exchange, numbering altogether about three hundred persons; that the board of directors of said exchange each of whom are defendants herein, transact its business partially in the State of Missouri and partially in the State of Kansas.

And your orator further shows to the court that substantially all the business transacted in the matter of receiving, buying, selling and handling cattle and other live stock at said Kansas City is carried on by the defendants herein and the other members of said exchange as commission merchants at said Kansas City Stock Yards, and that a large proportion of the live stock, consisting of cattle, hogs and sheep, bought, sold and handled at said stock yards by said defendants and their fellow members in said exchange, are shipped from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa and Arkansas, and the Territories of Oklahoma, Arizona and New Mexico; that when stock is received at said stock yards it is sold by the defendants aforesaid and their associate members of said exchange to the various packing houses situated in Kansas City, Missouri, and Kansas City, Kansas, and is also sold for shipment to various other markets, and particularly for shipment to the Chicago, St. Louis and New York markets; that a vast number of cattle, hogs and other live stock is thus received annually at said stock yards and so sold, and handled by the members of said Kansas City Live Stock Exchange, and that said Kansas City stock market is a public market and supplies a large number of packing houses located at and near Kansas City, Missouri, and Kansas City, Kansas, and other points in different states of the Union; that said Kansas City market next to Chicago is
4 the largest live stock market in the world, and that under the custom and practice which has for many years prevailed and is now in vogue at said Kansas City Stock Yards, the live stock received at said stock yards upon its arrival there, is delivered to commission merchants who are members of said Kansas City Live Stock Exchange, who receive, handle, sell or reship the same for the consignors and owners thereof to other states and territories, charging therefor a commission for their services in that respect; that in the course of business at said stock yards, and in such buying, selling, handling and reshipment of cattle, hogs and sheep at said Kansas City market, said stock is moved and shifted from that part of said stock yards situated in the

State of Kansas, to that part of said stock yards located in the State of Missouri, and vice versa, according to the convenience of said Kansas City Stock Yards Company; that in the reshipment of stock from said stock yards a portion are shipped from the State of Kansas and a portion from the State of Missouri, the loading pens and chutes of said corporation being, as before alleged, situated in both said states and contiguous to each other; that a large proportion of the live stock handled, sold and reshipped at said Kansas City Stock Yards by the defendants and other members of said Kansas City Live Stock Exchange are encumbered by mortgages thereon executed by the owners thereof in the various states and territories aforesaid where said live stock is raised and fed; that said mortgages are made to the defendants and the other members of said Kansas City Live Stock Exchange doing business at said stock yards, and that it is the practice and custom of the defendants and their associates to advance large sums of money to stock growers and owners of cattle in the states and territories aforesaid, so that the owners of said live stock may have the means to feed and prepare it for market; that when said live stock so mortgaged are ready for shipment they are consigned to the defendants and other members of said live stock exchange who have, as aforesaid, made advancements thereon, and on the sale of said stock the amount of said advancements and interest is deducted from the proceeds of the sale of said cattle by the commission merchants having a lien thereon by mortgage as aforesaid; that ninety per cent of the members of said live stock exchange make such advancements of money on live stock, and the large and growing market for live stock at Kansas City is largely sustained by means of the money so advanced to the cattle raisers by the defendants herein and their associates; that said stock yards at Kansas City afford to owners, shippers and dealers in live stock the only available means at that place for handling, selling and reshipping live stock, and the only available place for those purposes within two hundred miles to the north, south and east of Kansas City and for two thousand miles to the west thereof; that by reason thereof said Kansas City Stock Yards is the only available public market for the purchase and sale of live stock for an exceedingly large territory located in the states and territories of the United States hereinbefore named, and the only available means for the exchange of inter-state traffic in said live stock between the states and territories aforesaid; that it is, and for several years has been, the daily custom and practice of said defendants and their associates in the conduct of their commission business to sell live stock

in the State of Missouri, which is at the time located at said stock yards in pens in the State of Kansas, and to sell live stock in the State of Kansas, which is at the time located at said stock yards in pens in the State of Missouri, and deliveries of said live stock are made on such sales from the State of Kansas to purchasers in the State of Missouri, and deliveries of said live stock are also daily made on such sales from the State of Missouri to purchasers in the State of Kan-
6 sas; that all of the commission merchants engaged in the business of buying, selling and reshipping live stock at said Kansas City market are members of said Kansas City Live Stock Exchange.

And your orator further shows to the court that it now is, and for several years has been, the custom and practice among a large number of cattle growers and shippers in different states and territories of the United States, who consign live stock to the Kansas City Stock Yards for sale, to draw drafts for various amounts on the commission merchants to whom said live stock is consigned, and attaching the bill of lading issued by the carrier therefor, to draw money on said drafts from the local banks throughout the western states and territories aforesaid, and when said drafts are presented to the consignees, the commission men aforesaid, at Kansas City, the same are paid by them in the States of Missouri and Kansas, and the proceeds thereof remitted by the collecting banks to the banks located in the various towns and cities from which said live stock was shipped, and who have advanced money on the drafts aforesaid; that by reason of the business at said stock yards being transacted on both sides of the state line between Kansas and Missouri, and by reason of the fact that live stock received, bought, sold and reshipped at said stock yards are transported from one state to another state of the Union, and in the course of being so received, sold, delivered and reshipped at the stock yards, are at times in Kansas and at others in Missouri, the said busines is inter-state in character, and the legislation of the States of Missouri and Kansas is inapplicable thereto, and such business can only be regulated and controlled by federal legislation, because it is a part of the commerce between the states; that said Kansas City stock market is patronized to a large ex-
7 tent by buyers of live stock who ship their purchases made at said Kansas City Stock Yards from the States of Kansas and Missouri to states east thereof, and for export to foreign countries, and that such purchasers of live stock at said stock yards have resident agents who make purchases of live stock through the defendants and other members of said Kansas City Live Stock Exchange, and said live stock

when so purchased is loaded into railroad cars and carried to Chicago, St. Louis, New York and other eastern markets; that large shipments of live stock are made as aforesaid from the States of Missouri, Kansas, Texas, Iowa, Arkansas, Colorado, and the Territories of Oklahoma, Arizona, and New Mexico to said Kansas City Stock Yards for the purpose of having said live stock sold and the proceeds returned to the owners thereof in the states and territories aforesaid; that if the person or partnership or corporation to whom said live stock is consigned at Kansas City aforesaid is not a member of said Kansas City Live Stock Exchange and a [a] subscriber to its rules and by-laws, then said consignee is not permitted and cannot sell or dispose of said live stock at the Kansas City market, for the reason that the defendants and all the other commission merchants doing and controlling the business at said stock yards, as required by the rules of said exchange refuse to buy live stock or in any manner negotiate or deal with or buy from a person or commission merchant who is not a member of said Kansas City Live Stock Exchange; that in all such cases the owner of live stock shipped to the Kansas City market is compelled to reship the same to some other market, and by the unlawful combination existing among the defendants and the other members of said Kansas City Live Stock Exchange is prevented from delivering such live stock to the Kansas City Stock Yards, and the sale of said live stock is thereby hindered and delayed,
8 thus entailing extra expense and loss to the shipper, and placing an obstruction and embargo on the marketing of all live stock shipped from the states and territories aforesaid to the Kansas City market which is not consigned to the Kansas City Stock Yards Company, or to the defendants, or other members of said Kansas City Live Stock Exchange, who alone are permitted by said Kansas City Stock Yards Company to transact business at its stock yards.

And your orator further shows to the Court that the defendants and the other members of said Kansas City Live Stock Exchange have adopted, and are governed by, certain articles of association, rules and by-laws, which have been subscribed to by each of the above named defendants, many of which said rules and by-laws, are in restraint of trade and commerce between the states and intended to create a monopoly in contravention of the laws of the United States in that behalf; that rule nine adopted by said defendants and their associates in said live stock exchange and now in force as one of its by-laws or rules, provides as follows:

"Rule IX. Commissions.

Section 1. The commissions charged by members of this association for selling live stock shall not be less than the following named rates:

Sec. 2. Six dollars per carload for single-deck carloads of hogs or sheep, and ten dollars per carload for double-deck carloads of the same: Provided, members of this exchange may, after charging commissions as above provided, pay a regular sheep salesman on these yards a sum of money contingent on number of sheep sold; said sheep salesman may be in the employ of other members of the exchange.

Sec. 3. Fifty cents per head for cattle of all ages. In carloads of twenty-four or more not more than twelve dollars per carload; ten dollars per single-deck carload and eighteen dollars per double-deck carload of veal calves.

Sec. 4. Fifty cents per head for cattle and twenty-five cents per head for calves and ten cents per head for hogs and sheep, in mixed carloads—but not to exceed twelve dollars per carload. Fifty cents per head for cattle and twenty-five cents per head for calves driven into the yards, and ten cents per head for hogs and sheep for sixty head or less; more than that number shall be charged for at carload rates.

Sec. 5. Fifty cents per head for buying cattle for stockers or feeders: Provided, such charges shall not exceed twelve dollars per carload; six dollars per single-deck carload
9 for buying sheep and ten dollars per double-deck carload. All purchases paid for by a commission house or shipping clearance made by same shall be deemed a purchase and charged for as above provided.

Sec. 6. Not less than four dollars per single-deck and five dollars per double-deck carload for buying live hogs, and not less than three cents per head for hogs bought by the head.

Sec. 7. No member or commission firm or corporation represented herein shall do business for a yard trader or speculator on this market for less charges than one-half the regular commission.

Sec. 8. Firms or corporations represented in this exchange may handle the business of non-resident commission firms or corporations, when the stock is consigned direct to or from said non-resident commission firm or corporation, at half the rates fixed by this rule. Provided, said non-resident commission firms or corporations are established on one or more of the following markets, to wit: Chicago, Ill.; East St. Louis, Ill.; St. Louis, Mo.; Omaha, Neb.; Wichita, Kas.; St. Joseph, Mo.; Denver, Col.; and Pueblo, Col.

Sec. 9. No member of this exchange or firm or corporation represented herein shall cause or allow to be shipped in his or its name any kind of live stock, for the purpose of violating any of the provisions of this rule.

Sec. 10. No agent, solicitor or employee, shall be hired except upon a stipulated salary, not contingent upon commissions earned (save as provided in section 2 of this rule). No solicitor shall be employed except as a bona fide traveling agent, who shall not solicit consignments local to his own neighborhood only nor to secure his individual trade. Nor shall any agent, solicitor or employee, be hired who is employed by any other party or parties, or who is actively engaged in other business (save as provided in section 2 of this rule). Members of this exchange must file with the secretary within five days of employment the names and addresses of their solicitors. More than three solicitors shall not be employed at one time by a commission firm or corporation—resident or non-resident of Kansas City—may travel as solicitors, but must be registered as one of the three allowed each firm or corporation. It shall be a violation of this rule for any solicitor representing or claiming to represent, a commission firm or corporation in any other market to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

Sec. 11. Any member of this association or firm or corporation represented herein, sending or causing to be sent a prepaid telegram or telephone message quoting the markets, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine is not paid within three days said firm or member shall be suspended until said fine is paid: Provided, however, that prepaid messages may be sent to shippers quoting actual sales of their stock on the day made; also to parties desiring to make purchases on this market.

Sec. 12. Any member of this exchange or firm or corporation in which he may be a partner, violating any of the provisions of this rule, shall be fined not less than $500 nor more than $1,000 for the first offense; if said fine be not paid within three days said member or firm may be suspended from membership until same is paid. For a second offense, said member or firm may be expelled from membership in the exchange.

Sec. 13. From such fines and special assessments the exchange shall pay a reward of $500 to any party or parties fur-

nishing sufficient evidence to convict any member of a violation of any of the provisions of this rule, and said reward shall be paid immediately after conviction.

Sec. 14. For the purpose of making effective section 12 of this rule, when the treasurer shall not have on hand from fines collected the sum of $500, the directors shall levy a special assessment, pro rata, on each commission firm or corporation buying or selling live stock in this market who is a member of the exchange, and they shall continue to levy such special assessments in such amounts as will keep a fund of $500 constantly on hand for this purpose. Said fund shall be kept as a special fund and shall be used for no other purpose.

Sec. 15. Each firm or corporation represented in this exchange shall be held responsible for any violations of this rule by any party doing any portion of a commission business in its name, and any penalty imposed for violation of the foregoing shall be on account of such party; if not paid within three days the firm or corporation doing said business shall sever its business connections with such party within ten days. No firm or corporation shall thereafter do any business for such party until said fine is paid."

And your orator further shows to the Court that all of said defendants have agreed to be bound by and conform to the provisions of said rule 9 as above set forth, and that the board of directors of said Kansas City Live Stock Exchange have within three months last past suspended members thereof for a violation of the provisions of said rule, and the board of directors of said Kansas City Live Stock Exchange have from time to time exercised jurisdiction over complaints made against members of said exchange for violation of different sections of said rule. That rule sixteen of said Kansas City Live Stock Exchange, now in force and adopted and subscribed to by said defendants, provides as follows:

"Rule XVI. Limitations. Section 1. No member of the Kansas City Live Stock Exchange shall transact any business with any person violating any of the rules or regulations of this exchange, or an expelled or suspended member, after notice of such violation, suspension or expulsion has been issued by the secretary or board of directors of the exchange."

And your orator further avers that each of the defendants have by the adoption of said articles of association, rules
11 and by-laws, and by associating themselves together in said association known as the Kansas City Live Stock Exchange, and in carrying out said articles, rules and by-laws, and by the conduct of business aforesaid as the Kansas City

stock yards, conspired and confederated together in violation of the laws of the United States, and particularly in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in the prosecution of said unlawful combination have agreed and confederated to monopolize the business of buying and selling live stock at said Kansas City market, and to illegally fix and establish a minimum price for buying and selling the same, and have further, in restraint of trade and commerce between the states, confederated together to prevent and restrain the free transmission of information regarding the state of the market of said Kansas City by telegraphic messages and information to the various states and territories aforesaid, and by the adoption and enforcement of said rule 9, have restricted the free employment of agents and solicitors in the prosecution of the business in which said defendants are engaged as live stock commission merchants, said business being carried [—] as aforesaid at the Kansas City stock yards.

And your orator further shows to the Court that the purpose of the defendants and their associates in organizing the Kansas City Live Stock Exchange, and in adopting and enforcing the rules and by-laws aforesaid, was and is to prevent the shipment and consignment of any live stock to the Kansas City market, unless said stock is shipped and consigned to the Kansas City stock yards, and to the defendants or other members of the Kansas City Live Stock Exchange, and that the further purpose of said defendants and their associates in organizing said association and in so preventing the shipment and consignment of live stock to persons other than
12 themselves, was to compel shippers of live stock from each of said western states and territories to pay to defendants and their associates the commissions and charges provided for in said rule 9 and to prevent all shippers of live stock from said western states and territories from placing their property on sale at the Kansas City market, unless such commissions so provided for in said rule 9 were paid to the defendants or their associates in said unlawful combination.

And your orator further shows to the Court that it was also the purpose of said defendants and their associates, by the means aforesaid, to monopolize the business of receiving, handling, selling, buying and reshipping all live stock received at the Kansas City market, and all live stock raised in said western states and territories and shipped to said Kansas City, and also to prevent the sale at said Kansas City market by any person not a member of said Kansas City Live Stock Exchange of any live stock whatever from the states and ter-

ritories aforesaid, and to prevent any person other than themselves from acting as commission merchants in and about the sale of live stock at the Kansas City market, and to obstruct and retard the owners of live stock in the states and territories aforesaid in the sale and disposition of their property in the market at said Kansas City, and in the other markets hereinbefore named, to which cattle are reshipped or forwarded from said Kansas City stock yards.

In consideration whereof, and inasmuch as your orator is relievable only in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, your orator respectfully prays that your honors will order, adjudge, and decree that said Kansas City Live Stock Exchange be dissolved, and that said defendants, and each of them, be provisionally and permanently enjoined and prohibited from entering into, or continuing in, any sort of
13 combination, contract, agreement, or confederation to deprive the people engaged in shipping, selling, buying, and handling live stock received from the states and territories aforesaid and intended to be sold to the packing houses at Kansas City, Kansas, and Kansas City, Missouri, or to other persons or corporations, or intended to be reshipped to other states or territories or to foreign countries, from enjoying free access to the market at Kansas City, and to the facilities afforded by the Kansas City stock yards, on the payment of the same rate and charges at said stock yards as are now paid by the defendants and their associate members of said Kansas City Live Stock Exchange.

And your orator further prays that said defendants, and each of them, their servants, agents and employes, be provisionally and perpetually enjoined and restrained from enforcing, or acting pursuant to said rule 9 of said Kansas City Live Stock Exchange, or yielding obedience thereto; also from imposing or attempting to impose any of the fines or penalties provided for in said rule; also from discriminating, in any manner, against any person who is not a member of said Kansas City Live Stock Exchange solely because of such non-membership; also from refusing, by united or concerted action, to deal or trade with persons who are not members of said Kansas City Live Stock Exchange solely because of such non-membership; also from entering into any contract, combination or conspiracy, fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock shipped from one state or territory for sale or disposition in another state or territory; also from entering into any contract, combination or conspiracy limiting, or attempting to limit, the right of any person in business at said Kansas City

stock yards to employ labor or assistance, or the right of any such person to send telegrams, prepaid or not, from said stock yards to any other state or territory.

14 And your orator also prays for such other, further or different relief herein, with its costs, as equity may warrant, or to the Court may seem meet.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to their best and utmost knowledge, remembrance, information and belief, full, true, direct, and perfect answer make, but not under oath, answer under oath being specially waived, to each and all the matters and things in this bill and petition contained, and that as fully and as particularly as if the same were here repeated paragraph by paragraph and they were specially interrogated thereunto severally, may it please your honors to grant to your orator a writ of subpoena ad respondendum issuing out of and under the seal of this honorable court, to be directed to the said Henry Hopkins, A. Isaacson, F. X. Jardon, J. T. Kiely, A. J. Knollin, W. L. Ladd, T. F. McDonald, J. W. Orlander, M. S. Peters, O. C. Peters, Gilaun Reed, E. E. Richardson, W. A. Rogers, J. K. Southee, J. H. Clotfelter, L. M. Egan, Fred Ehrke, Harry Trower, O. B. Trower, S. R. Trower, Wm. Winder, R. H. Wise, T. E. Ladd and Woodson McCoy, commanding them, and each of them, on a certain day, and under a certain penalty to be therein inserted, to appear before your honors in this Honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises; and further to stand to, perform, and abide by such further order or decree as to your honors shall seem meet; and also a writ of provisional and a writ of perpetual injunction to the same tenor, purport and effect, as is hereinbefore set forth and prayed.

And your orator as in duty bound will ever pray.

W. C. PERRY,
United States Attorney and Solicitor for Complainant.
JUDSON HARMON,
Attorney General.

RANKIN MASON,
Asst. U. S. Atty. Of Counsel.

15 State of Kansas,
Wyandotte County—ss.

Norman B. Greer of lawful age, being duly sworn, says that he has read the foregoing bill of complaint and that the [the] statements and allegations therein contained are true.

NORMAN B. GREER.

Subscribed and sworn to before me this 23 day of December, 1896.

[Seal] GEO. F. SHARITT, Clerk.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Bill of complaint. Filed Dec. 31, 1896. Geo. F. Sharitt, Clerk.

* * * * * * * * * *

23 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States of America, Complainant,
vs.
Henry Hopkins et al., Defendants.

MOTION FOR LEAVE TO MAKE NEW PARTIES.

Comes now the complainant, and moves the court for leave to make new and additional parties defendant, for the reason that the present defendants are only a portion of the members of the so-called Kansas City Live Stock Exchange, and for the reason that all the members of said exchange are necessary parties to a full adjudication of the questions involved in this suit.

W. C. PERRY, U. S. Atty.

ORDER.

On consideration of the motion of the complainant for leave to make new parties defendant, it is hereby ordered that the complainant be, and hereby is, given leave to amend its bill by making parties defendant the following persons:

J. C. Abbott, Reuben Abbot, J. W. Adams, L. A. Allen, J. C. Anderson, L. B. Andrews, K. B. Armour, S. B. Armour, Wm. Atchison, H. M. Baker, W. C. M. Baker, B. F. Baldwin, C. P. Baldwin, I. J. Baldwin, I. S. Barnes, G. R. Barse, R. T. Bass, A. E. Beggs, G. T. Bell, Wells Benson, F. W. Bishop, C. W. Black, J. A. Blair, G. W. Bolen, C. J. Booth, E. R. Boswell, J. O. Brinkerhoff, C. G. Bridgeford, D. B. Brooks, Hamer Brown, S. G. Burnside, M. M. Cable, G. B. Campbell, G. W. Campbell, R. K. Campbell, S. W. Campbell, C. R. Canon, M. W. Carroll, A. C. Cassidy, W. L. Cassidy, H. P. Child, John Clay, Jr., G. W. Clawson, J. E. Cote, Frank Cooper, R. E. Cox, C. P. Crider, Zeb F. Crider, A. J. Gillespie, J. F. Gillespie, L. J. Gillespie, T. E. Gillespie, W. F. Grant, J. E. Greer, N. B Greer, J. E. Hale, G. T. Hall, J. C. Hall, W. W. Hall, J. H. Harrington, P. H. Harris, Alex. Henderson, W. C. Henrici, George Holmes, C. H. Howard, A. B. Hunt, W. F. Huston, T. S. Hutton, D. N. Hyre,

J. E. Inman, S. D. Irwin, J. N. Irwin, N. T. Jackman, G. E. Jones, L. S. Jones, S. F. Jones, G. O. Keck, G. W. Keeney, I. N. Keeney, James Keeney, Thomas Kelly, W. L. Hendricks, C. M. Keys, Isaac Keys, E. F. Kirk, A. J. Knollin, Louis Kopp, J. N. Payne, C. A. Pieronnet, R. R. Pieronnet, A. W. Penny, Clay Peters, S. D. Peters, G. H. Pierson, W. E. Pierson, R. H. Prigg, H. N. Reed, W. J. Reid, D. R. Rice, M. W. Rice, E. J. Rickes, C. O. Robinson, Eugene Rust, R. W. Ryan, John Salisbury, G. W. Sanders, W. H. Sawtell, Samuel Scaling, F. W. Schulz, W. M. Schwartz, E. T. Scovill, J. C. Scroggin, M. D. Scruggs, C. A. Shaeffer, Jesse Sherwood, C. H. Shirley, T. C. Shoemaker, Frank Siegel, J. H. Simcock, E. M. Smith, A. J. Snider, C. A. Snider, J. K. Southee, H. M. Sparrow, W. N. Sparrow, Madison Staley, J. I. Standish, M. W. St. Clair, C. C. Steele, Michael Steele, James Stephens, G. W. Stockwell, Jere Crowley, J. B. Crowley, S. G. Crum, C. T. Daniels, C. A. Davis, James Dick, Charles Dixon, C. G. Dixon, J. D. Dobyns, G. W. Doerr, J. C. Dold, H. B. Dorsett, J. S. Dorsey, Andrew Drumm, R. H. Duke, B. M. Duncan, John Dyer, T. J. Eaman, G. T. Ecton, E. F. Edgecomb, Fred. Ehrke, Wm. Elmore, J. P. Emmert, A. J. Epperson, Wm. Epperson, A. G. Evans, J. D. Eubank, W. J. Ewart, T. F. Farmer, S. D. Felt, P. H. Finn, J. W. Firebaugh, F. O. Fish, F. W. Flato, Jr., J. A. Fleming, W. F. Fletcher, W. H. Forrest, F. A. Forsha, G. W. Foster, G. A. Fowler, Lafayette Frew, G. I. Gann, C. S. Garrett, M. T. Burwell, W. E. Curtis, T. C. Shelby, J. A. Sutphen, D. L. Jones, J. D. Robertson, H. H. Lane, W. H. H. Larimer, J. E. Larmon, Samuel Lazarus, T. B. Lee, Charles Leigh, L. A. Lennon, H. S. Lincoln, L. Lusk, J. W. Martin, L. T. Martin, W. B. McAlister, F. W. McCoy, J. C. McCoy, J. S. McIntosh, J. P. McMurrary, C. G. Means, W. W. Means, J. T. Megredy, A. A. Miller, W. O. Miller, F. O. Mills, F. B. Mitchener, F. S. Moffett, P. Montgomery, W. F. Moore, C. F. Morse, A. T. Mustion, J. H. Neff, G. N. Nichols, W. A. Noel, G. H. Nute, L. O. Nutter, H. C. Offutt, R. T. Offutt, E. M. Parlin, P. W. Parrott, H. B. Patterson, H. L. Patterson, T. B. Patton, J. H. Payne, I. S. Alexander, M. F. Blanchard, James Cowgill, A. J. Elliott, David Olenger, J. B. Russell, F. R. Stoller, J. R. Stoller, H. L. Straight, E. L. Swazey, E. F. Swift, W. L. Tamblyn, E. E. Talbot, J. F. Taylor, W. H. Taylor, T. F. Timmons, W. P. Tinkham, J. P. Titsworth, H. B. Tower, R. M. Tracy, Thomas Trower, D. S. Underwood, M. J. Verner,
24 J. H. Waite, J. F. Waite, G. M. Walden, S. R. Walker, H. E. Wallingford, B. L. Welch, J. A. Welch, F. W. Welhener, R. N. Wells, G. W. Westfall, L. E. White, R. C. White, J. R. Wilhite, Erasmus Wilson, R. P. Woodbury, S. P. Woods, James Worden, F. C. Wornell, William Wright, F. O. Sanders, L. F. Young, P. H. Ketcham, G. A. McWilliams,

W. R. Munger, J. P. Peters, Samuel Grabenheimer, C. H. Means and Benjamin Holmes.

CASSIUS G. FOSTER, Judge.

Indorsed: No. 7402. In the Circuit Court of the U. S. Dist. of Ks. U. S. vs. Henry Hopkins et al. Motion for leave to make new parties and order thereon. Filed Jan. 23, 1897. Geo. F. Sharitt, Clerk.

Which amendment was accordingly made.

* * * * * *

29 EXHIBIT A.

ARTICLES OF ASSOCIATION,

RULES AND BY-LAWS

AND

RULES FOR INSPECTION OF HOGS

OF THE

Kansas City Live Stock Exchange

Together with a List of Members.

April 1, 1896.

1896:
LAWTON & BURNAP, PRINTERS AND STATIONERS,
KANSAS CITY.

ARTICLES OF ASSOCIATION,

RULES AND BY-LAWS

AND

RULES FOR INSPECTION OF HOGS

OF THE

Kansas City Live Stock Exchange

Together with a List of Members.

April 1, 1896.

KANSAS CITY:
LAWTON & BURNAP, PRINTERS AND STATIONERS,
1896.

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J. R. STOLLER, - - -	PRESIDENT.
CHAS. P. BALDWIN, - -	VICE-PRESIDENT.
W. C. HENRICI, - - -	TREASURER.
R. P. WOODBURY, - -	SECRETARY.
A. J. VANLANDINGHAM, -	COMMISSIONER TRANSPORTATION.

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CHAS. P. BALDWIN,
*ZEB. F. CRIDER,
*L. A. LENNON,
*J. W. MARTIN,
†W. S. HANNAH,
†A. E. BEGGS,
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‡FRANK SIEGEL.
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F. B. MITCHENER.

BOARD OF ARBITRATION.

J. E. HALE,
W. A. ROGERS,
R. H. DUKE,
GEO. R. BARSE,
M. D. SCRUGGS.

*Term expires February, 1897.
†Term expires February, 1898
‡Term expires February, 1899.

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W. P. ALLCUTT.

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D. L. JONES.

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R. C. WHITE, W. A. ROGERS,
A. J. McCOY.

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ISAAC KEYS, J. C. DOLD,
W. P. ALLCUTT.

BOARD OF ARBITRATION.

K. B. ARMOUR, W. F. MOORE,
H. P. CHILD, J. P. EMMERT,
GEORGE HOLMES.

ARTICLES OF ASSOCIATION
AND
RULES AND BY-LAWS
OF THE
KANSAS CITY LIVE STOCK EXCHANGE.

We, the undersigned, for the purpose of organizing and maintaining a business Exchange, not for pecuniary profit or gain nor for the transaction of business, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards,* and to promulgate and enforce amongst the members correct and high moral principles in the transaction of business, have associated ourselves together under the name of KANSAS CITY LIVE STOCK EXCHANGE, and hereby agree each with the other, that we will faithfully observe and be bound by the following Rules and By-Laws, and such new rules, additions or amendments as may from time to time be adopted in conformity with the provisions thereof, from the date of organization, by the election of a Board of Directors and other officers, as prescribed by Rule 1.

RULE I.

GOVERNMENT OF THE EXCHANGE.

SECTION 1. The government of the Kansas City Live Stock Exchange is hereby vested in a Board of eleven Directors, all of whom shall be members of the Exchange, three of whom shall be elected annually, and the President and Vice-President shall be elected annually by the members of the Exchange, and shall be *ex officio*

*Fourth of July, Thanksgiving and Christmas the Stock Yards to be closed except for the reception and feeding of live stock.

members of the Board of Directors. Seven members of the Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time to any fixed date preceding the next regular meeting of said Board.

SEC. 2. There shall be elected by members of the Exchange a Board of Appeals and a Board of Arbitration, consisting of five members each, who shall hold their respective offices for the term of one year, or until their successors shall have been elected. The qualifications for election to either of these Boards shall be the same as for the office of Director. Three members shall constitute a quorum for the transaction of business. No person shall at the same time be a member of both Boards or of either Board and the Board of Directors.

SEC. 3. The annual election of Officers and Boards of Appeals and Arbitration, as provided in Sections 1 and 2, shall be held at the office of the Exchange on the second Monday of February in each year, between the hours of 10 o'clock A. M. and 4 o'clock P. M., and all voting shall be by ballot. The official term of all officers shall commence on the Monday succeeding their election.

SEC. 4. Three members of the Exchange not Directors, shall be appointed by the Board of Directors as Judges of Election, who shall receive and count the ballots and certify the results of the election to the Secretary.

SEC. 5. For members of the Board of Directors, Board of Appeals and Board of Arbitration, the candidates receiving the highest number of votes respectively, shall be elected.

SEC. 6. In case of a tied vote on any member of electors, including and exceeding the number to be chosen, another election shall be held on the succeed-

ing day for as many officers as are undetermined by such tie.

SEC. 7. No one shall be allowed to vote by proxy.

RULE II.

DUTIES OF THE PRESIDENT.

SECTION 1. It shall be the duty of the President to act as the general executive officer of the Exchange and of the Board of Directors; to preside at all meetings of the Exchange and of the Board of Directors, and to direct the proceedings of each in accordance with the Rules, By-Laws and Rules of Order governing the same; to call special meetings of the Exchange, which shall be done by causing notice of the same to be publicly posted on the bulletin-board of the Exchange: *Provided*, such request shall state the object for which such meeting is to be called and it shall be made at least one business day preceding the said meeting.

SEC. 2. It shall be the duty of the President to preserve order and business decorum during all meetings of the Exchange, and in case any member or other person shall be guilty of any disorderly, boisterous or offensive conduct while in such meetings, he shall for that offense be fined a sum not exceeding five dollars, or suspended from all privileges of the Exchange for such time as may be determined by the President, subject, however, to appeal to the Board of Directors, but pending such appeal he shall be suspended if the President shall so elect.

SEC. 3. It shall be the duty of the President to temporarily fill any vacancy which may occur in any appointive office of the Exchange, and to appoint all committees whose appointment is not otherwise provided for.

RULE III.

DUTIES OF THE VICE-PRESIDENT.

SECTION 1. It shall be the duty of the Vice-President to perform the duties of the President in case of his absence or disability.

RULE IV.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

SECTION 1. All the business and financial concerns of the Association shall be managed and conducted (in accordance with the Rules, Regulations and By-Laws of the Exchange) by or under the direction of the Board of Directors.*

SEC. 2. The Board of Directors shall, on the Monday succeeding each annual election or as soon thereafter as may be practicable, convene and appoint a Secretary, a Treasurer and such other officers, clerks, assistants and employes as it may consider necessary for the purposes of the Exchange, and it may establish such regulations for the direction and government of such appointees as it may deem proper; and may fix their compensation and determine by whom the same shall be paid. The terms of office of all such appointees shall commence on the Tuesday succeeding their appointment, or at such other time as the Board of Directors may designate, and shall continue for one year, or until their successors are appointed and assume their duties; but all such appointments shall be revocable at the will and pleasure of the said Board.

SEC. 3. The Board of Directors shall require all appointees to well and faithfully perform all and singular the duties of their office and may require a good and sufficient bond to secure such performance.

*In any case where a member of the Board of Directors has given information of a private character of anything that transpires in meetings of the Board, he will be requested to hand in his resignation—(Page 231).

SEC. 4. The regular meetings of the Exchange and of the Board of Directors shall be held on the first Monday of each month, except when said Monday shall fall upon a legal holiday, in which case the meeting may be omitted.

SEC. 5. The Board of Directors shall cause to be posted on the bulletin-board of the Exchange all appointments of public concern which it may make and all revocations of the same, and at every annual meeting it shall make a full report of receipts and expenditures properly classified, and an exhibit of the financial affairs, property and general condition of the Exchange. It may, previous to the annual meeting of the Exchange, assess on each of the members of the Exchange a *pro rata* amount, which in its judgment will be sufficient in the aggregate to meet all estimated expenditures of the Exchange for the ensuing fiscal year; and it shall at the annual meeting, in case an assessment is made, report to the Exchange the *pro rata* amount assessed.

SEC. 6. When any member of the Exchange has failed to comply promptly with the terms of any business contract or obligation and has failed to equitably and satisfactorily adjust and settle the same; or when any member has failed to promptly comply with and fulfil the award of any Board of Appeals or Board of Arbitration, made in conformity with the Rules, Regulations and By-Laws of the Exchange, he shall, upon admission or proof of such delinquency before the Board of Directors, be by it suspended from all the privileges of the Exchange until all his outstanding obligations to members of the same shall have been adjusted and settled, when he may, upon application, be reinstated. Notice of all applications for relief from suspension under the provisions of this section, shall be posted upon the bulletin-board of the Exchange for at

least one week prior to the hearing of any such application by the Board of Directors, when, if no other just claims shall be filed against said applicant, he may be so reinstated; and if the Board of Directors shall be satisfied that such failure was merely from financial inability or misfortune, such member, having so adjusted or settled such outstanding obligations, shall be reinstated, and such reinstatement in either case shall thereafter serve as a bar to any further discipline by the Exchange on account of any claims maturing at a date prior to the reinstatement of the said applicant.

SEC. 7. When any member of the Exchange shall be guilty of improper conduct of a personal character in any of the rooms of the Exchange; or when any member shall be guilty of a wilful violation of any business contract or obligation, and shall neglect or refuse to equitably and satisfactorily adjust and settle the same; or when any member shall wilfully neglect or refuse to comply with the award of any Board of Appeals or Board of Arbitration rendered in conformity with the Rules, Regulations and By-Laws of the Exchange; or when any member shall violate any of the Rules, Regulations and By-Laws of the Exchange; or when any member shall be guilty of any act of bad faith, or any attempt at extortion, or of any other dishonorable or dishonest conduct, he shall be fined, censured, suspended or expelled by the Board of Directors, as it may determine from the nature and gravity of the offense committed. A majority of a quorum sitting at a regular or adjourned meeting of the Board of Directors shall be necessary to fine, censure or suspend, and an affirmative vote of at least seven members of the Board of Directors shall be necessary to expel.

SEC. 8. In any investigation or trial before the Board of Directors, or before any other duly consti-

tuted committee or tribunal of the Exchange, if any member who shall have had notice from the Secretary in writing to appear and testify in the case; or if any member who shall have been cited by the Chairman of any duly constituted committee or other tribunal of the Exchange to appear and testify, shall neglect or refuse to so appear and testify; or, if testifying, shall refuse to answer any question, which may by a majority vote of the said Board of Directors, committee or other tribunal, be declared proper and pertinent to the case in hearing, he shall be subject to suspension by the said Board from all privileges of the Exchange for such period as said Board may determine; which may be done by said Board in case of contempt of a witness before said Board of Directors or on the report in writing of any such committee or other tribunal, in case the contempt shall occur before such committee or other tribunal of the Exchange. It is hereby provided that no witness shall be compelled to answer any question which shall criminate himself, nor shall any testimony be admitted which, in the opinion of the committee or other tribunal, is irrelevant to the case in hearing.

SEC. 9. Any member suspended for misconduct may be reinstated by a majority vote of a quorum of the Board of Directors.

SEC. 10. An expelled member shall not be readmitted to membership except upon payment of the regular initiation fee and annual assessment, and upon satisfactory evidence that he is a fit person for membership in the Exchange and then only upon an affirmative vote of at least seven members of the Board of Directors: *Provided*, such vote shall be had at a regular meeting at least one week succeeding a motion to readmit.

SEC. 11. All charges made to the Board of Directors against any member of the Exchange for any

default, misconduct or offense shall be in writing and shall state the default, misconduct or offense charged, and the same shall be signed by one or more members of the Exchange.

SEC. 12. No member shall be fined, censured, suspended or expelled under this rule without an examination by the Board of Directors of the charge against him, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, accompanied by a copy of the charges against him in writing. Such notice must be served upon the accused personally by the Secretary or his assistants, or it may be left at his (the accused's) ordinary place of business; in either of which cases the notice shall be considered sufficient and the examination may proceed, whether the accused is present or not.

SEC. 13. It shall be the duty of the Board of Directors, in case of a grave offense committed by any member against the good name or dignity of the Exchange, or any violation of its Rules, shall come to its knowledge, either by public rumor, report or otherwise, to cause a preliminary or informal investigation to be made by a committee of its number into the truth or falsity of such rumor or report, and if the said committee after investigation shall deem any member guilty of such offense as rumored or reported, it shall so report to the Board of Directors, with specific charges, whereupon the member thus implicated shall be notified to appear before the Board of Directors in manner as provided by Section 12 of this Rule, and, if found guilty, the said member shall be fined, censured, suspended or expelled as hereinbefore provided.*

*Any party desiring any matter, whether in the way of complaint or otherwise, to be considered by the Board of Directors, must put such matter in writing over his own signature. (Page 220.)

SEC. 14. In investigations before the Board of Directors or before any committee of the Exchange, no party shall be allowed to be represented by professional counsel.

SEC. 15. It shall be the duty of the Board of Directors to appoint such standing committees from its own number as it may deem necessary.

SEC. 16. In case of absence or disability of the President and Vice-President, it shall be the duty of the Board of Directors to elect from its number a temporary Chairman, who, in addition to his duties as Chairman of the Board of Directors shall also temporarily perform all other duties devolving upon the President.

SEC. 17. The Board of Directors shall have power to call special meetings of the Exchange upon such notice and for such purpose as it may deem proper. All calls for special meetings of the Exchange shall state the specific object of such meetings, and no other business than that for which a special meeting was called shall be considered or transacted at any such meeting, except by unanimous consent.

SEC. 18. In case of a vacancy occurring in the Board of Directors, Board of Appeals or Board of Arbitration, caused by the death, resignation or removal of a member, the Board of Directors shall have the power to fill such vacancy for the remainder of the unexpired term of such member.

SEC. 19. In case any member of that body shall absent himself from six consecutive regular meetings of the Board of Directors, without having been previously excused, or without communicating to the President, in writing, a good and sufficient excuse for his absence or a resignation of his office, the Board of Directors shall have power to declare the office of

said Director vacant and to immediately proceed to fill said vacancy.

SEC. 20. Special meetings of the Board of Directors may be convened by order of the President or by written request of any five members of the said Board addressed to the Secretary. Such meetings may be called by public notice, posted on the bulletin-board of the Exchange, or by service of personal or written notice by the Secretary, or his assistants, upon the members of said Board. A written notice left at the usual place of business of any member of said Board of Directors shall be sufficient notice in case of meetings called by service of personal or written notice.

RULE V.

DUTIES OF THE SECRETARY.

SECTION 1. The Secretary, under the direction and control of the Board of Directors, shall keep a journal of the proceedings of the Exchange; take charge of the seal, books, papers and property belonging to the Exchange. He shall furnish the Chairman of every special committee, a copy of the resolutions whereby such committee shall have been appointed, and, under the direction of the President, he shall give notice of any meetings of the Board of Directors or of the Exchange. He shall conduct the correspondence of the Exchange and read such papers or records as the presiding officer may direct; shall attend the meetings of the Executive Committee, Board of Appeals and Arbitration and of the Board of Directors, and keep an official record of their proceedings, give notice when their services are required, issue the necessary notices and papers to parties and deliver copies of all awards and findings. He shall collect all moneys due the Exchange for assessments, fines, fees or otherwise and pay the same to the Treasurer; shall keep his office open

during the usual business hours; shall see that the rooms and property of the Exchange are kept in good order, and shall perform such other duties as the Board of Directors may from time to time direct.

SEC. 2. It shall be the duty of the Secretary to sign and furnish to all committees appointed by the Board of Directors, official notices of their appointment. Such notices shall specify their duties and the time for which they are appointed.

RULE VI.

DUTIES OF THE TREASURER.

SECTION 1. The Treasurer shall receive from the Secretary all funds belonging to the Exchange and shall disburse the same as the Board of Directors may direct; he shall make a monthly report to the Board of Directors and a full report to the Exchange at its annual meeting each year, of all receipts and disbursements. The accounts of the Treasurer shall be kept in books belonging to the Exchange, which books shall be at all times open for the examination of the Board of Directors or any committee of said Board.

RULE VII.

BOARDS OF APPEALS AND ARBITRATION.

SECTION 1. It shall be the duty of the Board of Arbitration to hear and determine all cases of disputed claims voluntarily submitted for its adjudication by members of the Exchange. All evidence in such cases shall be taken under oath or affirmation, and shall be duly recorded. In all such adjudications the Board shall construe all the Rules, Regulations and By-Laws of the Exchange as being designed to secure justice and equity in trade and all awards or findings shall be

made in conformity therewith and in accordance with the laws of the land.

SEC. 2. Any award or finding of the Board of Arbitration may be appealed from, and the case may be carried to the Board of Appeals for revision: *Provided*, notice of such appeal shall be given to the Secretary in writing within two business days after such award or finding shall be delivered to the parties in controversy.

SEC. 3. It shall be the duty of the Board of Appeals to review such cases as may be appealed from the Board of Arbitration and formally brought before it, and its awards or findings shall be final and binding, and shall not be subject to revision by any other tribunal of the Exchange. The said Board of Appeals shall receive such new evidence as may be offered by oath or affirmation, and if in its judgment evidence is produced which will justify a rehearing of the case by the Board of Arbitration, it shall remand the case to the said Board of Arbitration for a new trial. Any final award or finding of the Board of Appeals shall be based on the record of the Board of Arbitration and shall be made in like manner as prescribed by Section 2 of this rule.

SEC. 4. The Board of Appeals and Board of Arbitration shall render their awards or findings in writing, through the Secretary of the Exchange, within two business days after their decision has been made. Such awards or findings shall be signed by the Chairman of the Board and shall be certified by the Secretary, under the seal of the Exchange. The official records and decisions of these Boards and all other records of the Exchange may be inspected by any member of the Exchange, upon application to the Secretary.

SEC. 5. When, from absence or disqualification of regular members, the Board of Appeals or Board of Arbitration cannot be formed, the parties in controversy shall be allowed to fill vacancies with any mem-

ber or members of the Exchange willing to serve (not being a Director), on whom they may agree, or if such parties are willing to submit their case to a Board of Arbitration they may choose three or more members (willing to serve and not being of the Board of Appeals) whom they may agree upon; such agreement in either case to be communicated to the Secretary in writing, signed by all the parties to the controversy. A majority award or finding of any such Board shall be binding, and any award or finding of Boards thus formed shall be under the same rules and shall have the same effect as if made by the regular Boards respectively.

SEC. 6. Parties desiring the services of either of the foregoing Boards shall notify the Secretary to that effect in writing, and, before the hearing of the case, shall file an agreement with him signed by the parties to the controversy, binding themselves to abide by, perform and fulfil the final award or finding which shall be made touching the matter submitted, without recourse to any other court or tribunal. Any member of a firm or corporation may execute said agreement on behalf of such firm or corporation. Neither party shall postpone the trial of a case longer than five days after it has been submitted, unless good cause can be shown therefor satisfactory to the Board. Trifling and unimportant matters shall not be entertained by the Board of Arbitration.

SEC. 7. If parties to a controversy fail to appear at the time set for trial or request a postponement, they may (if the case be postponed) be assessed with costs by and for the use of the Board, in any sum in the Board's discretion, not exceeding five dollars. The Board, however, may insist that the trial shall take place without postponement.

SEC. 8. When neither of the parties to the contro-

versy is a member of the Exchange, the aforesaid fees may be doubled. Fees and all additional costs that may be incurred in the investigation of suits shall be finally paid by either of the parties in the case as may be decided by the Board hearing the same, and shall be included in its award or finding.

RULE VIII.

MEMBERSHIP.

SECTION 1. Any person of good character and credit and of legal age, whose interests are centered* at the Kansas City Stock Yards, on presenting a written application endorsed by two members of the Exchange, stating name and business avocation of applicant, on deposit of $25 with the Secretary, after ten days' notice of such application shall have been posted upon the bulletin-board of the Exchange, shall be admitted to membership, upon the approval of at least seven affirmative ballot votes of the Board of Directors and upon the payment of an initiation fee of $1,000, or upon the presentation of a certificate of unimpaired or unforfeited membership, duly transferred and signing an agreement to abide by the Rules, Regulations and By-Laws of the Exchange and all amendments that may in due form be made thereto. Any applicant for membership who shall fail to take out a certificate of membership within twenty days after the date of being accepted as above provided, shall forfeit to the Exchange the deposit of $25.

SEC. 2. Each member shall be entitled to receive a certificate of membership bearing the corporate seal of the Exchange and the signature of the President and Secretary. If the member in whose name said certificate stands has paid all assessments due and has against

*An applicant, before he will be accepted by the Board of Directors, must be a resident of Kansas City: *Provided*, a member of a firm doing a commission business at other live stock centers, with a house here, may, upon application, be admitted to membership.

him no outstanding, unadjusted or unsettled claims or contracts, contracted or made with any member of this Exchange subsequent to becoming a member thereof, and said membership is not in any way impaired, it shall, upon the payment of $25, be transferred upon the books of the Exchange to any person eligible to a membership who may be approved by the Board of Directors, after due notice by posting as provided by Section 1 of this rule. A membership of a deceased member may be transferred in like manner by his legal representatives. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin-board of the Exchange for at least ten days, when, if no objection be made, it shall be assumed that the member has no outstanding claim against him.

SEC. 3. No member of the Exchange or firm or corporation represented therein, engaged in the commission business, can be carried by another individual, firm or corporation for compensation contingent upon the business done. Each member of this Exchange engaged in the commission business shall register with the Secretary, together with the name of the firm or corporation with which he is connected. No member of this Exchange or firm or corporation represented herein shall do any portion of a commission business for any one not registered as above provided, except on a charge of full commission for such services.

SEC. 4. No firm or corporation engaged in the commission business shall be entitled to the benefits and privileges of this Association unless every member thereof or stockholder therein shall also be a member of this Association:* *Provided*, that the total number of stockholders in a commission firm or corporation holding memberships need not exceed five. Each firm

*Either the principal or agent purchasing hogs on this market, either on orders or for shipment, should be requested to take out a membership in this Exchange (Page 244).

or corporation represented herein shall be required to register with the Secretary the names of all members composing said firm or corporation and all employes.

SEC. 5. Any member of this Exchange who shall hold any stock in any incorporated company for the evasion of any of the intents and purposes of this rule shall, upon investigation by the Board of Directors, be fined not less than $100 nor more than $500.

SEC. 6. On and after December 14, 1894, no certificate of membership shall be allowed to be used except for one firm or corporation.

RULE IX.

COMMISSIONS.

SECTION 1. The commissions charged by members of this Association for selling live stock shall not be less than the following named rates:

SEC. 2. Six dollars per carload for single-deck carloads of hogs* or sheep and ten dollars per carload for double-deck carloads of the same: † *Provided*, members of this Exchange may, after charging commissions as above provided, pay a regular sheep salesman on these yards a sum of money contingent on number of sheep sold; said sheep salesman may be in the employ of other members of the Exchange.

SEC. 3. Fifty cents per head for cattle of all ages. In carloads of twenty-four or more not more than twelve dollars per carload; ten dollars per single-deck carload and eighteen dollars per double-deck carload of veal calves.

SEC. 4. Fifty cents per head for cattle and twenty-five cents per head for calves and ten cents per head

*A car containing thirty-five or more head of hogs, with no other animals among them, calls for $6.00 commission (Page 234)

†When a member of this Exchange, not in the commission business, but a dealer and speculator on the yards, consigns sheep to a commission firm or himself, they cannot be sold by a commission firm for less than the regular commissions provided for in Rule IX (Page 269).

for hogs and sheep, in mixed carloads—but not to exceed twelve dollars per carload. Fifty cents per head for cattle and twenty-five cents per head for calves driven into the yards, and ten cents per head for hogs and sheep for sixty head or less; more than that number shall be charged for at carload rates.*

SEC. 5. Fifty cents per head for buying cattle for stockers or feeders:† *Provided*, such charges shall not exceed twelve dollars per carload; six dollars per single deck carload for buying sheep and ten dollars per double-deck carload.‡ All purchases paid for by a commission house or shipping clearance made by same shall be deemed a purchase and charged for as above provided.§

SEC. 6. Not less than four dollars per single-deck and five dollars per double-deck carload for buying live hogs, and not less than three cents per head for hogs bought by the head.‖

SEC. 7. No member or commission firm or corporation represented herein shall do business for a yard-trader or speculator on this market for less charges than one-half the regular commission.¶ **

SEC. 8. No firm shall handle the business of a non-

*No commission firm shall charge over the maximum commission ($6.00) for selling a number of hogs equal to a carload, whether same are driven into yards or come in mixed carloads (Page 269).

†The rule contemplates charging fifty cents for steers (yearlings or otherwise) driven out into the country and purchased for a customer, no matter how large the number (Page 269).

‡In case where a railroad agrees to furnish double-deck cars, and in place of same furnishes two single-decks, charging double-deck rates, the commission should be for two single-deck cars.

§There is nothing bearing on the subject of commissions to be charged by buyers in making purchases for packing houses (Page 233).

‖Where the seller has weighed hogs to the wrong party a fine shall be imposed on him of 5c per cwt. on hogs so weighed. The seller shall present his ticket to the Secretary of this Exchange, who shall collect said fine and give a receipt therefor; upon receiving this receipt the parties receiving hogs shall mark ticket for payment with price originally agreed upon. The buyer and receiver of said hogs shall each receive one-half the amount (Page 235).

¶Clearing cattle for speculators or yard-traders for less than fifty cents per head or $12.00 per carload, bought on orders, is a violation of Rule IX., Sec. 5.

**A commission firm must, under the rules, charge full commissions on live stock consigned for speculators or yard-traders at any of the markets where it is the custom to divide commissions with regular commission firms.

resident commission house for less than full commissions, except that said consignments be made direct to said non-resident commission house from one of the following named markets: Chicago, Ill.; East St. Louis, Ill.; St. Louis, Mo.; Omaha, Neb.; Wichita, Kan.; Denver, Col.; Pueblo, Col.; St. Joseph, Mo.; Sioux City, Ia.; Peoria, Ill; Milwaukee, Wis., and Ft. Worth, Tex.* †

SEC. 9. No member of this Exchange or firm or corporation represented herein shall cause or allow to be shipped in his or its name any kind of live stock, for the purpose of violating any of the provisions of this rule.

SEC. 10. No agent, solicitor or employe, shall be hired except upon a stipulated salary, not contingent upon commissions earned (save as provided in Section 2 of this rule). No solicitor shall be employed except as a bona fide traveling agent, who shall not solicit consignments local to his own neighborhood only nor to secure his individual trade. Nor shall any agent, solicitor or employe, be hired who is employed by any other party or parties, or who is actively engaged in other business (save as provided in Sec. 2 of this rule). Members of this Exchange must file with the Secretary, within five days of employment, the names and addresses of their solicitors. More than three solicitors shall not be employed at one time by a commission firm or corporation. Members of a commission firm or corporation—resident or non-resident of Kansas City—may travel as solicitors, but must be registered as one of the three allowed each firm or corporation. It shall be a violation of this rule for any solicitor representing or

*This division of commission is entirely optional with the members of this Exchange (Page 232).

†Full commissions shall be charged on all live stock consigned from the markets noted in Section 8, Rule IX., by other than commission firms or commission corporations. Also all live stock to obtain half commissions on this market must be actually unloaded and offered for sale on markets mentioned in Section 8, Rule IX. (Page 259).

claiming to represent, a commission firm or corporation in any other market to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

SEC. 11. Any member of this Association or firm or corporation represented herein, sending or causing to be sent a prepaid telegram or telephone message quoting the markets, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine be not paid within three days, said firm or member shall be suspended until said fine is paid: *Provided*, however, that prepaid messages may be sent to shippers quoting actual sales of their stock on the day made; also to parties desiring to make purchases on this market.* †

SEC. 12. Any member of this Exchange or firm or corporation in which he may be a partner, violating any of the provisions of this rule, shall be fined not less than $500 nor more than $1,000 for the first offense; if said fine be not paid within three days, said member or firm may be suspended from membership until same is paid. For a second offense, said member or firm may be expelled from membership in the Exchange.

SEC. 13. From such fines and special assessments the Exchange shall pay a reward of $500 to any party or parties furnishing sufficient evidence to convict any member of a violation of any of the provisions of this rule, and said reward shall be paid immediately after conviction.

*It is contrary to the spirit and intent of Rule IX., Sec. 11, and detrimental to the best interests of the trade in general, for any commission firm to allow parties at interior towns to obtain market quotations by telegraph and send copies of same to parties by mail.

†No infringement of the rules of the Exchange for a party, a member of this Exchange, to send out prepaid telegraphic reports of sales made for a customer on this market, and to add the state of the live stock market for that day.

SEC. 14. For the purpose of making effective Section 12 of this rule, when the Treasurer shall not have on hand from fines collected the sum of $500, the Directors shall levy a special assessment, *pro rata*, on each commission firm or corporation buying or selling live stock in this market who is a member of the Exchange, and they shall continue to levy such special assessments in such amounts as will keep a fund of $500 constantly on hand for this purpose. Said fund shall be kept as a special fund and shall be used for no other purpose.

SEC. 15. Each firm or corporation represented in this Exchange shall be held responsible for any violation of this rule by any party doing any portion of a commission business in its name, and any penalty imposed for violation of the foregoing shall be on account of such party; if not paid within three days the firm or corporation doing said business shall sever its business connections with such party within ten days. No firm or corporation shall thereafter do any business for such party until said fine is paid.

RULE X.

ASSESSMENTS.

SECTION 1. The assessments shall be due and payable ten days after levying the same. Any member neglecting to pay the same for thirty days thereafter shall be suspended from the privileges of the Exchange until the same is paid. If not paid within three months his membership shall be declared forfeited to the Exchange and shall be cancelled on the membership books of the Association.

RULE XI.

SPECIAL ELECTION OF OFFICERS.

SECTION 1. If from any cause an election of officers be not had at the regular annual election, the Board of

Directors shall order a special election, notice of which shall be posted for at least three days immediately preceding the date thereof.

RULE XII.

SEAL.

SECTION 1. The Exchange shall have a seal bearing its name and date of organization.

RULE XIII.

QUORUM.

SECTION 1. Fifteen members of the Exchange shall constitute a quorum, but a smaller number shall have power to adjourn.

RULE XIV.

SPECIAL COMMITTEES.

SECTION 1. Special committees may be appointed by the Exchange or by the Board of Directors to such service and in such manner as either may see fit. It shall be the duty of every committee appointed by the Exchange, the President or the Board of Directors, to act promptly when called upon.

RULE XV.

RESPONSIBILITY OF MEMBERS FOR ACTS OF PARTNERS AND EMPLOYES.

SECTION 1. Each member of this Exchange shall be responsible for the acts of his partners and employes for any violation of the Rules, Regulations or By-Laws of this Exchange.

RULE XVI.

LIMITATIONS.

SECTION 1. No member of the Kansas City Live Stock Exchange shall transact any business with any person violating any of the Rules or Regulations of this

Exchange, or an expelled or suspended member, after notice of such violation, suspension or expulsion has been issued by the Secretary or Board of Directors of the Exchange.

RULE XVII.

TRANSPORTATION FUNDS.

SECTION 1. There shall be levied an assessment of four cents on each car of live stock sold by members of this Exchange for the creation and maintenance of a fund to employ requisite agencies for the protection of live stock transportion rates affecting the interests of patrons of this Exchange: *Provided*, that the Kansas City Stock Yards Company shall pay one-half the expense of said agency. Said assessment shall be paid by the commission firm or corporation making sale. The Board of Directors shall be empowered to regulate this assessment whenever in its opinion it shall be necessary, with a maximum assessment of four cents per car.

RULE XVIII.

WHEN RESPONSIBILITY CEASES.

SECTION 1. The responsibility of the seller, as regards inspection of live stock, shall cease on all live stock, sold at these yards, as soon as said live stock shall have been driven from the scale pen.

RULE XIX.

INSPECTORS' CERTIFICATES.

SECTION 1. All inspectors for different cattle associations or individuals at these yards, shall file with the Secretary of this Exchange a certificate of their appointment from their respective associations or owners of stock whom they represent, showing that each inspector is entitled to receive money for brands of certain cattle claimed by them.

RULE XX.

EVASIONS.

SECTION 1. Any evasion of the terms or intent of these rules shall be deemed a violation thereof and shall be visited by the penalties heretofore provided.

RULE XXI.

GUARANTEED PAYMENTS.

SECTION 1. All members of the Association, or firm in which they may be partners, who pay for live stock purchased at these yards by dealers, shall file with the Secretary of the Association a list of the names of all the dealers for whom he or they severally make such payments, and such list shall also embrace a declaration on the part of the party or parties filing the same, in such manner and form as the Board of Directors of the Association may prescribe, to the effect that he or they will pay for all the purchases of live stock made by the party or parties therein named; and after any member of the Association shall have filed such list of names, as above provided, he shall be held responsible for any sum of money which any dealer whose name appears in such list may have agreed to pay to any member of the Association for live stock, until the same shall have been paid in full, or otherwise lawfully settled. *Provided*, the member or firm making such sale shall promptly present a bill of the same at the office of the member or firm who guarantees the payment thereof.

SEC. 2. When any member of the Association or firm in which he may be a partner, shall have determined to cancel the agreement he or they may have made with any dealer to pay for his purchases of live stock, he or they shall first give the Secretary of the Association notice to that effect; and the Secretary shall immediately notify all firms, members of the Associa-

tion, to the same effect, by sending notice thereof upon a form prescribed by the Board of Directors of the Association, to their respective places of business; and the liability of the guarantor in such cases shall cease, when, and only when, all purchases of live stock made by such dealer upon the day of notification and prior thereto, shall have been paid for in full, or otherwise lawfully settled.

SEC. 3. Any member of the Association or firm in which he may be a partner, selling live stock for any dealer, shall return the proceeds of such sale to the member or firm who guarantees the payment of said dealer's purchases.

SEC. 4. The list of names filed with the Secretary of the Association, as provided in Section 1 of this rule, shall be open to the inspection of its members, and to no other person; and the Secretary shall furnish firms for their own use, and for no other purpose, a certified copy of the same, or to individual members, upon application.*†

*There are two blanks for filling out lists of speculators that can be had of the Secretary at any time (Page 263).

†A speculator or yard trader must not buy stock in his own name while trading through a commission house (Page 266).

RULES REGULATING

THE

INSPECTION OF HOGS

AS ADOPTED BY THE DIRECTORS

OF THE

KANSAS CITY LIVE STOCK EXCHANGE.

APPOINTMENT OF THE EXECUTIVE COMMITTEE.

First—There shall be appointed by the Board of Directors on the first Monday in March of each year a committee of seven members for the term of one year, which shall be known as the Executive Committee, to be selected from the Kansas City Live Stock Exchange—three each for the buying and selling interests, and one to be named by and representing the Kansas City Stock Yards Company.

DUTIES OF THE EXECUTIVE COMMITTEE.

Second—It shall be the duty of the members of the Executive Committee to organize by electing one of their number Chairman. Said Committee shall keep a record of its proceedings, which shall be open at all times to the inspection of the members of the said Exchange, and it shall post upon the bulletin-board of the said Exchange all its acts and doings which may be of interest to the members. And it shall be the duty of the said Executive Committee to appoint Inspectors and a Chief Inspector, as hereinafter provided; fix their terms of service and salaries; remove them whenever they, the said Committee, shall deem it for the best interests of this market; prescribe their duties, except in cases where the duties are herein expressly prescribed; assign them to duty; direct their labors generally and prescribe an oath of office to which each Inspector shall subscribe before entering upon his duties. All acts, decisions and instructions of the Executive Committee shall be in force until disapproved by the Board of Directors.

APPOINTMENT OF INSPECTORS.

Third—There shall be one Inspector appointed for and stationed at each hog scale, who shall decide in each instance how many, if any, piggy sows and stags there are in each lot of hogs weighed, and stamp the

number thereof on the scale ticket over his own signature; his decision shall be binding upon the buyer and seller thereof, unless such buyer or seller, or both, choose to appeal to the Chief Inspector as hereinafter provided; in all cases either the buyer or seller, or both, shall have the right to appeal. The Executive Committee shall appoint the Supernumerary Inspector for such length of time as it may deem necessary.

APPOINTMENT OF CHIEF INSPECTOR.

Fourth—The Executive Committee shall also appoint a Chief Inspector, whose duty it shall be to exercise a general supervision of the work of the Inspectors and to see that each hog scale is supplied with an Inspector for the use of the members of this Association, at the beginning of each business day. In case a buyer or seller is dissatisfied at any time with a dock by the Inspector employed by the Association, he may appeal to the Chief Inspector to review the hog or hogs of which the dock is complained, signing a written or printed form of appeal and an agreement to pay on demand one dollar into the treasury of the Exchange for the service. It shall thereupon be the duty of the Chief Inspector to inspect the hog or hogs and to enter his decision on a blank provided for the purpose, which blank shall also bear the Inspector's decision, and from the Chief Inspector's decision there shall be no appeal.*

DOCKAGE.

Fifth—The dockage or shrinkage allowed on all hogs shall be forty pounds for each piggy sow and eighty pounds for each stag, except in cases of lots of hogs averaging 150 pounds or less, which shall be classed as skips and be docked twenty pounds on piggy sows and forty pounds on stags. The Inspector shall dock all sows which show beyond a doubt that the same

*Abusive language towards an employe of the Exchange will not be tolerated by the Board of Directors (Page 236).

are pregnant, and all hogs which show plainly they have been used as boars. In no case shall hogs be subject to dockage because the same are rough or coarse.*

UNMERCHANTABLE.

Sixth—When a load of hogs is brought to the scales and it is found that there are one or more unmerchantable hogs in such load, these unmerchantable hogs shall be thrown out by the Inspector, but the same rules with regard to arbitration as to difference of opinion shall apply in such cases as to all other cases of dockage. The following shall be considered unmerchantable: Very thin or skinny, badly frozen so that the sale of meat is injured; any hogs boily or cut so that meat is injured for sale; crippled hogs (any hog that is unable to walk through the scale lots to the scales and off the scales without assistance; also broken-leg hogs); diseased hogs; badly ruptured (commonly called "bussing") hogs and all boars; any hog that has been castrated so recently that it has not healed shall be considered the same as a boar.†

NON-DOCKABLE HOGS.

Seventh—When hogs are bought by agreement without any dockage the ticket shall be marked "agreed." When hogs are sold otherwise than in the above-mentioned way they shall be docked in accordance with the rules.‡

*Any party or parties giving any information to or attempting to influence government inspectors as to the number of sows or unmerchantable animals in any draft, either going to or after coming off the scales, shall be fined $10.00. Said fine shall be paid forthwith. Until such fine is paid, any party or parties guilty of a violation of above rule shall be debarred from all privileges of inspection.

†Anyone trying to dispose of one or more pregnant sows which have been rejected (except as condemned hogs), shall be fined not less than $10.00 nor more than $100.00; and when sold by weight, ticket must be marked "agreed" by the Inspector.

‡Whenever buyers and sellers agree with reference to throwing out any piggy sows before they have passed the scales they shall be thrown out before weighing of the draft.

DISBURSEMENTS.

Eighth—The fund raised to defray the expense of inspection shall be disbursed only upon vouchers setting forth in the minutest manner for what the money is paid, and all other particulars essential to a good and sufficient voucher, receipted by the person in whose favor they are made or his legal representative, and approved by the Chairman and Secretary. When, and only when, such vouchers are presented, it shall be the duty of the Treasurer to pay the same. It shall also be the duty of the Treasurer to make and submit a statement of the receipts and disbursements, accompanied by vouchers as aforesaid, whenever requested to do so by the Directors. It shall be the duty of the Treasurer to turn over to his successor in office all of the said fund remaining in his possession, taking therefor a voucher as aforesaid.

REVENUE—FROM WHOM COLLECTED.

Ninth—In order to defray the expenses of said system of inspection, there shall be a charge of fifteen cents on each car of hogs, which shall be charged to the owner thereof.

AGREEMENT.

Tenth—No member of this Association, or firm or corporation represented herein, shall either buy or sell hogs except in conformity with these rules.

BY-LAWS.

ARTICLE I.

STATED MEETINGS—ORDER OF PROCEEDINGS.

At all general or stated meetings of the Exchange or Board of Directors, the following shall be the order of business:

Call to order.

Reading of minutes of previous meeting (which may be dispensed with).

Hearing reports.

Unfinished business.

New business.

Adjournment.

ARTICLE II.

BUSINESS OF SPECIAL MEETINGS.

At all special meetings of the Exchange or Board of Directors, only such special business shall be considered as was expressly embraced in the call of such meeting, except by unanimous consent.

ARTICLE III.

QUESTION OF ORDER—APPEALS.

The presiding officer shall judge of all questions of order and proceedings, and when the rules of the Exchange or of parliamentary order are infringed upon, he may call any member to order. A member may appeal to the Exchange on any question of parliamentary proceeding not provided by the Rules and By-Laws of the Exchange or by a special order, and, if seconded on such appeal, a majority of the members present shall decide the question at issue.

ARTICLE IV.

LIMITATIONS UPON DEBATE.

Every member who speaks shall rise and address the President, and no person shall speak more than twice upon the same subject, except by way of explanation, if objection is made thereto, unless permitted to proceed by a majority of those present.

ARTICLE V.

ON DEBATES.

When any member requires it, any one offering a motion shall put the same in writing. No debate shall be permitted except on a motion regularly made and seconded. A member, however, shall not be prevented from prefacing with explanatory remarks any motion he may be about to make.

ARTICLE VI.

AMENDMENTS.

A question may be modified by a motion to amend, either by adding words or by striking out certain words and inserting others, or by substituting a different motion on the same subject, or by dividing the question into two or more questions which shall be specified in the motion. When this motion to amend has been made, seconded and stated by the Chairman, it takes the place for the time being of the original question, and debate must be confined to its merits. This amendment can itself be amended, but the amendment of an amendment cannot be amended.

ARTICLE VII.

INTERRUPTIONS AND PRIVILEGED QUESTIONS.

When a question is under debate, no motion shall be received but to adjourn, to lay on the table, for the

previous question, to postpone to a certain day, to commit, to amend, or to postpone indefinitely. Which several motions shall have precedence in the order in which they are named and such motions shall preclude amendment or decision of the original questions until they are disposed of. Any motion to postpone to a certain day, to commit, or to postpone indefinitely, being decided shall not be again allowed on the same day. Any other motion once acted upon shall not again be revived except by a vote to reconsider, and a motion to reconsider shall not be entertained except at the same or the next meeting after the former action, and then only when made by a member who was absent or who voted with the majority.

ARTICLE VIII.

MOTIONS NOT DEBATABLE.

A motion to adjourn, to lay upon the table or to indefinitely postpone, shall not be debatable.

ARTICLE IX.

APPLICATION OF RULES OF ORDER.

All questions of order or proceedings provided for by the Rules and By-Laws shall be held to govern the Exchange and the Board of Directors.

ARTICLE X.

RULES AND BY-LAWS—HOW ALTERED OR AMENDED.

None of the foregoing Rules or By-Laws shall be rescinded or altered, nor shall any new Rules, Regulations or By-Laws be adopted unless by an affirmative ballot vote of a majority of the members present at a regular or called meeting of the exchange, and after notice of the proposed change shall have been conspicuously posted on the bulletin-board of the Exchange for at least ten days immediately preceding. No prop-

osition to amend the Rules, Regulations or By-Laws shall be acted upon by the Exchange unless it has previously to being posted as above, been approved by a majority of the Board of Directors at a regular meeting of said Board, or has been proposed in writing by at least ten members, or until such proposition shall have been submitted to a regular or special meeting of the Exchange for discussion, at least one day previous to final action thereon, at which meeting the proposition may be amended or modified in any way that is germane to its original intent ; except that the Board of Directors shall have full power to change or adopt any rules for the inspection of hogs or the dockage of the same, as it may deem advisable from time to time to be for the best interests of the Kansas City Live Stock Exchange.

MEMBERS OF THE
KANSAS CITY LIVE STOCK EXCHANGE,

APRIL 1, 1896.

No. of Certificate.	NAME.	No. of Certificate.	NAME.	No. of Certificate.	NAME.
146*a*	Abbott, H. C.	22	Cox, R. E.	204*a*	Gann, G. J.
38*a*	Abbott, Reuben.	35*a*	Crane, S. L.	40*a*	Garrett, C. S.
223*a*	Adair, J. F.	279	Crider, C. P.	53	Garrett, J. E.
113*a*	Adams, J. W.	134	Crider, Zeb. F.	101*a*	Gaylord, I. B.
126	Allen, L. A.	176*a*	Crowley, Jere.	98	Gillespie, A. J.
162*a*	Anderson, J. C.	177*a*	Crowley, J. B.	101	Gillespie, J. F.
230*a*	Andrews, L. B.	226	Crum, S. G.	100	Gillespie, L. J.
60	Armour, K. B.			99	Gillespie, T. E.
59	Armour, S. B.	56*a*	Daniels, C. T.	58*a*	Grant, W. F.
183	Atchison, Wm.	194*a*	Davis, C. A.	218*a*	Gray, J. W. T.
		83	Dick, James.	59*a*	Greer, J. E.
105*a*	Baker, H. M.	261	Dixon, Charles.	221	Greer, N. B.
16	Baker, W. C. M.	163*a*	Dixon, C. G.	246*a*	Gunn, L. A.
35	Baldwin, B. F.	39	Dobyns, J. D.		
40	Baldwin, C. P.	68*a*	Doerr, G. W.	157	Hale, J. E.
79	Baldwin, I. J.	82	Dold, J. C.	291	Hall, G. T.
258	Barnes, I. S.	27*a*	Dorsett, H. B.	105	Hall, J. C.
31	Barse, G. R.	190*a*	Dorsey, J. S.	148*a*	Hall, W. W.
247	Bass, R. T.	92*a*	Drumm, Andrew.	277	Hannah, W. S.
86	Beggs, A. E.	84*a*	Duke, R. H.	245	Harrington, J. H.
231*a*	Bell, G. T.	233*a*	Duncan, B. M.	212*a*	Harris, P. H.
206*a*	Benson, Wells.	193*a*	Dyer, E. W.	111*a*	Henderson, Alex.
132*a*	Bishop, F. W.			3	Henrici, W. C.
225*a*	Black, C. W.	82*a*	Eaman, T. J.	216*a*	Holmes, George.
234*a*	Blair, J. A.	116*a*	Egan, L. M.	122*a*	Hopkins, Henry.
61	Bolen, G. W.	292	Ecton, G. T.	131*a*	Howard, C. H.
143*a*	Booth, C. J.	96*a*	Edgecomb, E. F.	213	Hunt, A. B.
178*a*	Boswell, E. R.	145*a*	Ehrke, Fred.	296	Huston, W. F.
108	Brinkerhoff, J. O.	113	Elmore, Wm.	92*a*	Hutton, T. S.
223	Bridgeford, C. G.	15	Emmert, J. P.	215	Hyre, D. N.
197*a*	Brooking, S. L.	274	Epperson, A. J.		
236*a*	Brooks, D. B.	25	Epperson, Wm.	298	Inman, J. N.
159*a*	Brown, Hamer.	6*a*	Evans, A. G.	178	Irwin, S. D.
63	Burnside, S. G.	138*a*	Eubank, J. D.	124	Irwin, J. N.
		94*a*	Ewart, W. J.	217*a*	Isaacson, A.
24*a*	Cable, M. M.				
129*a*	Caldwell, J. H.	165*a*	Farmer, T. F.	42	Jackman, N. T.
121*a*	Campbell, G. B.	191*a*	Felt, S. D.	13*a*	Jardon, F. X.
106	Campbell, G. W.	250	Finn, P. H.	124*a*	Johnston, I. M.
252	Campbell, R. K.	235*a*	Firebaugh, J. W.	196*a*	Jones, G. E.
139*a*	Campbell, S. W.	110	Fish, F. O.	297	Jones, L. S.
87	Canon, C. R.	29*a*	Flato, F. W., Jr.	83*a*	Jones, S. F.
255	Carroll, M. W.	272	Fleming, J. A.		
66*a*	Cassidy, A. C.	26*a*	Fletcher, M. T.	109	Keck, G. O.
67*a*	Cassidy, W. L.	56	Fletcher, W. F.	281	Keeney, G. W.
48	Child, H. P.	173*a*	Forest, W. H.	246	Keeney, I. N.
172*a*	Clay, John, Jr.	136*a*	Forsha, F. A.	119	Keeney, James.
126*a*	Clawson, G. W.	202	Fosrer, G. W.	128*a*	Kelly, Thomas.
146	Clotfelter, J. H.	102	Fowler, G. A.	177	Kendricks, W. L.
168	Cole, J. E.	38*a*	Frew, Charles.	137	Keys, C. M.
14*a*	Comstock, R. L.	243	Frew, LaFayette.	118	Keys, Isaac.
114	Cooper, Frank.			119*a*	Kiely, J. T.

No. of Certificate.	NAME.
76	Kirk, E. F.
69	Knollin, A. J.
164*a*	Knopp, Louis.
34	Ladd, T. E.
249	Ladd, W. L.
155*a*	Lane, H. H.
207	Larimer, W. H. H.
21	Larmon, J. E.
106*a*	Lazarus, Sam'l.
81*a*	Lee, T. B.
94*a*	Leigh, Chas.
259	Lennon, L. A.
195*a*	Lincoln, H. S.
198*a*	Lowenstein, E.
220*a*	Lusk, L.
55	Martin, J. W.
84*a*	Martin, L. T.
185*a*	McAlister, W. B.
120	McCoy, F. W.
68	McCoy, J. C.
254	McCoy, Woodson.
181*a*	McDonald, T. F.
240	McIntosh, J. S.
219*a*	McMurray, J. P.
6	Means, C. G.
8	Means, C. H.
7	Means, W. W.
44*a*	Megredy, J. T.
133*a*	Miller, A. A.
208*a*	Miller, W. O.
226*a*	Mills, C. I.
64*a*	Mills, F. O.
23	Mitchener, F. B.
228*a*	Moffett, F. S.
229*a*	Moffett, John.
265	Montgomery, P.
42	Moore, W. F.
46	Morse, C. F.
30*a*	Mustion, A. T.
164	Neff, J. H.
25*a*	Nichols, G. N.
130*a*	Noel, W. A
133	Nute, G H.
263	Nutter, L. O.
112	Offutt, H. C.
71*a*	Offutt, R. T.
96	Olander, J. W.
78*a*	Parlin, E. M.
240*a*	Parrott, P. W.
242*a*	Patterson, H. B.
29*a*	Patteson, H. L.
289	Patton, T. B.
66	Payne, J. H.
90	Payne, J. N.
32	Pieronnet, C. A.
253	Pieronnet, R. R.
64	Penny, A. W.
4*a*	Peters, Clay.
127	Peters, M. S.
91*a*	Peters, O. C.
227*a*	Peters, S. D.
209	Pierson, G. H.
224*a*	Pierson, W. E.
299	Prigg, R. H.
116	Reed, Gilman.
229	Reed, H. N.
57	Reid, W. J.
13	Rial, S. T.
215*a*	Rice, D. R.
185	Rice, M. W.
211	Rickes, E. J.
47	Richardson, E. E.
192*a*	Riddels, R. A.
270	Roberts, G. R. T.
167*a*	Robinson, C. O.
24	Rogers W. A.
159	Rust, Eugene.
147*a*	Ryan, R. W.
176	Salisbury, John.
200*a*	Sanders, G. W.
201*a*	Sawtell, W. H.
273	Scaling, Samuel.
156	Schulz, F. W.
81	Schwartz, W. M.
288	Scovill, E. T.
280	Scroggin, J C.
182	Scruggs, M. D.
222*a*	Shaeffer, C. A.
241*a*	Sherwood, Jesse
134*a*	Shirley, C. H.
207*a*	Shoemaker, T. C.
237	Siegel, Frank.
43*a*	Simcock, J. H.
222	Smith, E. M.
5*a*	Snider, A. J.
220	Snider, C. A.
75	Southee, J. K.
188	Sparrow H. M.
268	Sparrow, W. N.
166*a*	Staley, Madison.
239*a*	Standish, J. I.
172	St. Clair, M. W.
213*a*	Steele, C. C.
186*a*	Steele, Michael.
17	Stephens, James.
242*a*	Stewart, M. K.
21*a*	Stockwell, G. W.
150*a*	Stoller, C. F.
149*a*	Stoller, F. R.
138	Stoller, J. R.
18	Straight, H. L.
175*a*	Swazey, E. L.
284	Sweeney, J. M.
119	Swift, E. F.
224	Tamblyn, W. L.
1*a*	Talbot, E. E.
189	Taylor, J. F.
295	Taylor, W. H.
45	Thesis, Henry.
212	Timmons, T. F.
208	Tinkham, W. P.
160*a*	Titsworth, J. P.
2	Tower, H. B.
153*a*	Tracy, R. M.
248*a*	Trowbridge, E. E.
285	Trower, Harry.
286	Trower, O. B.
287	Trower, S. R.
150	Trower, Thomas.
122	Underwood, D. S.
128	Verner, M. J.
260	Viglini, T. D.
244*a*	Voorhees, W. P.
1	Waite, J. H.
168*a*	Waite, J. F.
7*a*	Walden, G. M.
180*a*	Walker, S. R.
203*a*	Wallingford, H. E.
83	Ward, J. A.
11	Welch, B. L.
209*a*	Welch, J. A.
245*a*	Welheuer, F. W.
127*a*	Wells, R. N.
210	Westfall, G. W.
130	White, L. E.
38	White, R C.
110*a*	Wilhite, J. R.
187*a*	Wilson, Erasmus.
115*a*	Winder, William.
187	Wise, R. H.
111	Woodbury, R. P.
48*a*	Woods, S. P.
5	Worden, James.
125*a*	Wornell, F. C.
67	Wright, William.

a New Series Certificates.

In Memoriam.

HARRY DENNISON. Died October 19, 1886,
Aged 31 Years.

CHARLES EDWARD HOLMES. Died December 1, 1886,
Aged 28 Years.

SANFORD COLLINS ABBEY. Died December 7, 1886,
Aged 54 Years.

JEREMIAH P. HEALY. Died December 6, 1887,
Aged 29 Years.

WILLIAM SEDGWICK BIRD. Died June 15, 1888,
Aged 39 Years.

MARION BALL CUSTER. Died April 19, 1889,
Aged 46 Years.

JOHN F. GREGORY. Died September 5, 1889,
Aged 50 Years.

ANDREW JACKSON McCOY. Died October 17, 1890,
Aged 59 Years.

MARTIN LUTHER SARGENT. Died December 7, 1891,
Aged 54 Years.

THOMAS TROWER. Died August 31, 1892,
Aged 63 Years.

HENRY P. BALDWIN. Died September 14, 1892,
Aged 73 Years.

THOMAS GEORGE INMAN. Died September 26, 1893,
Aged 48 Years.

THOMAS CANDY COLE. Died November 26, 1893,
Aged 72 Years.

ALBERT GALLATIN EVANS. Died December 23, 1894,
Aged 62 Years.

JOHN RANDALL ROUSE. Died February 16, 1895,
Aged 48 Years.

EUGENE WILEY DYER. Died April 14, 1895,
Aged 26 Years.

NATHANIEL ALANSON ADAMS. Died May 2, 1895,
Aged 59 Years.

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TWENTY-SIXTH ANNUAL

LIVE STOCK REPORT

OF THE

KANSAS CITY STOCK YARDS CO.

FOR THE

Year Ending December 31, 1896,

AND

SUMMARY FOR YEARS 1871-1896.

...BY...

E. E. RICHARDSON, SECRETARY,

KANSAS CITY.

RECEIPTS AND SHIPMENTS

OF

LIVE STOCK

AT

Kansas City Stock Yards,

KANSAS CITY,

FOR THE YEAR 1896.

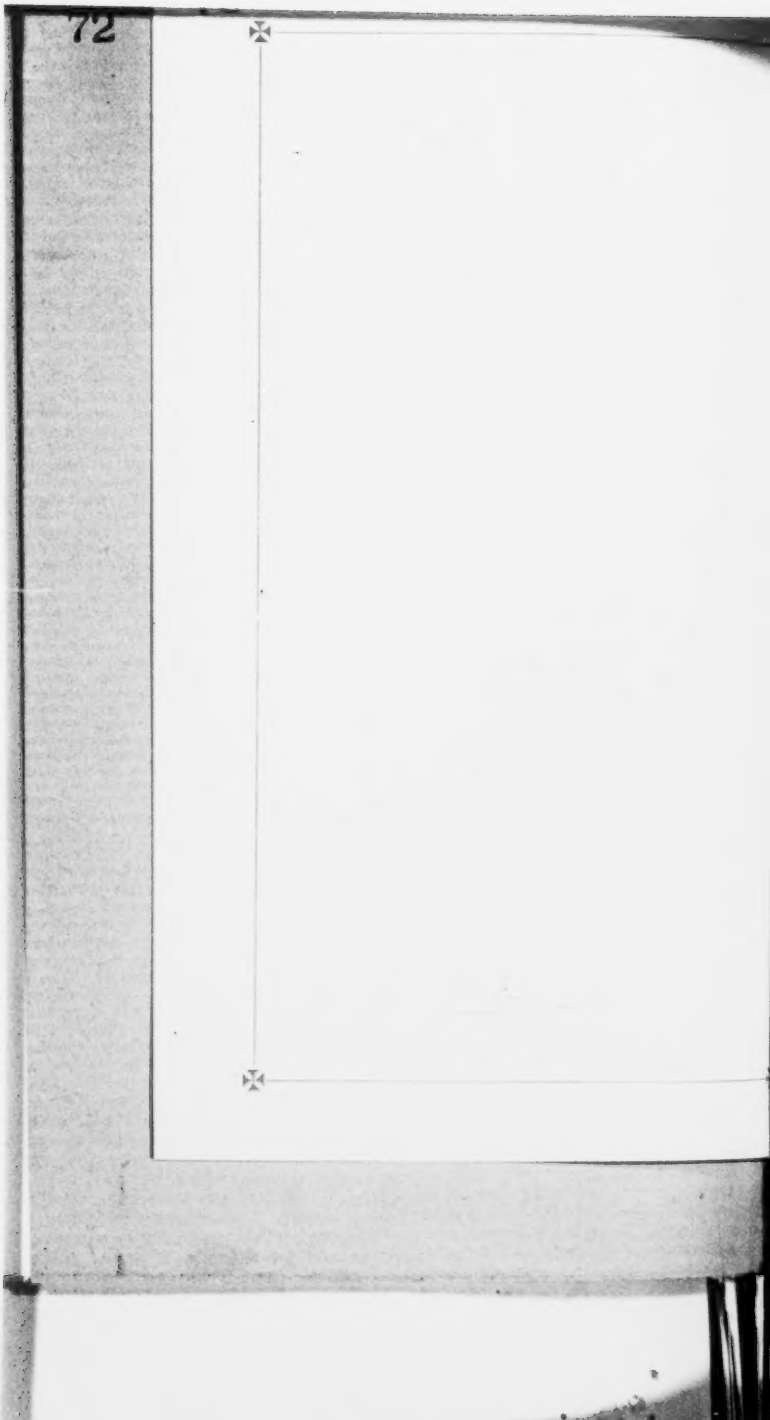
With a Summary of Receipts and Shipments of all Live Stock for a Term of Twenty-six Years, Ending December 31, 1896.

BY

E. E. RICHARDSON, SECRETARY,

KANSAS CITY.

KANSAS CITY, MO.
TIERNAN-HAVENS PRINTING COMPANY.
1897.



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Total Receipts for the Year.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	123103	2401	262369	52886	11939	9904
February..	104944	1748	183519	73499	9265	8047
March	105928	3598	187688	95191	6112	8122
April	90742	2345	252887	113215	2928	8314
May	105542	2270	269743	99600	3144	8988
June.....	106782	8958	267389	72189	1388	8735
July	127922	13735	172915	59211	1400	8086
August ...	157686	14741	136361	53708	1995	8634
September.	229945	16209	158874	109960	3703	11808
October...	212189	12292	212849	88911	5215	11463
November.	181233	10076	193420	98825	5397	10178
December.	168516	11793	307561	75931	5362	11335
Total..	1714532	100166	2605575	993126	57847	113594

Total Yearly Receipts.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	120827	.....	41036	4527	809	6623
1872.....	236802	.....	104639	6071	2648	13110
1873.....	227689	.....	221815	5975	4202	14603
1874.....	207080	.....	212532	8855	3679	13370
1875.....	174754	.....	63350	25327	2646	9082
1876.....	183378	.....	153777	55045	5839	11692
1877.....	215768	.....	192645	42190	4279	13968
1878.....	175344	.....	427777	36700	10796	16581
1879.....	211415	.....	588908	61684	15829	20702
1880.....	244709	.....	676477	50611	14086	22704
1881.....	285863	.....	1014304	79924	12592	29089
1882.....	439671	.....	963036	80724	11716	34668
1883.....	460780	.....	1379401	119665	19860	45470
1884.....	533526	.....	1723586	237964	27163	55927
1885.....	506627	.....	2358718	221801	24506	63213
1886.....	490971	.....	2264484	172659	33188	58924
1887.....	669224	.....	2423262	209956	29690	67752
1888.....	1056086	.....	2008984	351050	27650	74666
1889.....	1220343	.....	2073910	370772	34563	83972
1890.....	1472229	76568	2865171	535869	37118	108160
1891.....	1270917	76570	2599109	386760	31740	91456
1892.....	1479078	92077	2397477	438268	32505	97462
1893.....	1660807	86021	1948373	569517	35097	99755
1894.....	1689193	83352	2547077	589555	44237	107494
1895.....	1613454	76198	2457697	864713	52607	103368
1896.....	1714532	100166	2605575	993126	57847	113594
Total..	18561067	590952	36313120	6519308	576392	1376708

Total Shipped and Driven Out for Year.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	121934	2395	262164	53594	11741	3022
February..	105914	1763	184138	73116	9147	2762
March	104334	3621	186264	90615	6019	2422
April.....	92851	1941	253291	118136	3259	2161
May	105126	2406	269041	100956	3061	2754
June.....	106916	8764	266985	70643	1451	2369
July	127583	14038	174032	61249	1364	2660
August....	156806	14705	136861	52331	1885	3815
September.	223230	15523	158254	107272	3701	5470
October...	221406	12962	213772	90725	5324	4423
November.	176329	10065	192581	99198	5240	3834
December.	171907	12101	307459	71585	5518	4319
Total..	1714336	100284	2604842	989420	57710	40011

Total Yearly Shipments and Driven Out.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	120794	.....	40102	4527	809	5125
1872	236799	.....	104399	6071	2648	10683
1873.....	227666	.....	220574	5951	4202	10044
1874.....	207069	.....	212714	8877	3685	10879
1875.....	174211	.....	63096	25310	2635	7036
1876	183256	.....	153180	54829	5321	7131
1877.....	215771	.....	193204	42333	4296	7366
1878.....	177549	.....	426355	37012	10794	9483
1879.....	211361	.....	589794	61157	15826	12741
1880.....	244281	.....	676848	51004	14090	12874
1881.....	286134	.....	1015447	79848	12604	14382
1882.....	439521	.....	961906	80708	11607	19698
1883.....	460598	....	1379005	119180	19869	24662
1884.....	533992	.....	1724287	237214	27092	32056
1885.....	506577	.....	2359027	223088	24656	33452
1886.....	490906	.....	2264323	172397	33098	27050
1887.....	669062	.....	2423546	209491	29618	31489
1888.....	1055547	.....	2009250	351796	27739	33213
1889.....	1219395	.....	2073314	369878	34485	36803
1890.....	1472853	76713	2863354	535207	37134	50704
1891.....	1272249	76580	2601109	387912	31783	39508
1892.....	1477741	92156	2396737	438139	32432	42621
1893.....	1661247	85968	1948457	569277	34891	39366
1894.....	1687274	83256	2547588	589359	44153	39210
1895.....	1613123	75923	2457167	863100	52655	34056
1896.....	1714336	100284	2604842	989420	57710	40011
Total..	18557312	590880	36309625	6513085	575832	631643

Receipts for the Year by Railroads.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	121071	2067	259002	51173	5971	9904
February .	103535	1447	180855	71553	4900	8087
March	104327	2985	184377	94138	3505	8122
April.....	89615	2033	249533	112729	1394	8314
May	104017	2047	265503	98050	1753	8988
June.....	105782	8751	261967	70580	860	8735
July	126935	13388	169229	57491	869	8086
August....	156798	14490	133752	52210	1401	8624
September.	229105	15836	155014	109301	1945	11808
October...	210729	11987	207671	86869	3038	11463
November.	178629	9727	188431	97993	3218	10178
December.	165937	11495	300872	73238	2917	11335
Total..	1696430	96253	2556206	975325	31771	113594

Yearly Receipts by Railroads.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	115160	.....	40454	1691	618	6623
1872.....	248646	.....	101334	4739	1772	13110
1873.....	205870	.....	208528	2551	1950	14603
1874	184216	.....	197854	7041	1942	13870
1875.....	153378	.....	56526	20381	1168	9063
1876.....	165101	.....	140049	45850	3036	11682
1877.....	197133	.....	178872	32551	2788	13358
1878.....	160062	.....	400587	28356	6701	16583
1879.....	197859	.....	562042	48276	9634	20702
1880.....	233268	.....	644282	41208	7891	22704
1881.....	273036	.....	967154	72742	7815	29089
1882.....	425233	.....	941552	71194	8131	34668
1883.....	442023	.....	1356489	105067	10344	45470
1884.....	518402	.....	1697445	217656	15744	53227
1885.....	492429	.....	2327297	201104	16034	63213
1886.....	478088	.....	2231083	160674	22192	58924
1887.....	656617	.....	2397874	200137	21271	67732
1888.....	1040625	.....	1991106	343781	19511	74666
1889	1205003	.....	2053540	344923	24314	83972
1890.....	1453470	74686	2837629	504939	24738	108160
1891.....	1250800	74731	2572361	362308	22687	91456
1892.....	1463903	89892	2375642	428339	23432	97462
1893.....	1648027	83739	1925379	556528	22087	99737
1894.....	1673771	79945	2512988	574224	27071	107498
1895.....	1596445	71980	2420570	847901	29833	106368
1896	1696430	96253	2556206	975325	31771	113594
Total..	18144995	571226	35694843	6199486	364475	1376708

Shipments for the Year by Railroads.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	54564	781	26274	8571	6173	3022
February .	48824	593	29781	23056	4994	2762
March	45088	2216	15129	22517	3215	2422
April.....	35655	601	34236	33698	1755	2161
May	41943	766	52349	31039	1657	2754
June.....	41318	1566	35231	24236	948	2369
July	52697	1421	38375	15171	963	2660
August....	79912	4571	45008	17365	1278	3815
September.	122294	7252	34260	42070	2400	5470
October...	102873	5823	27767	30817	3222	4423
November.	92504	6069	4108	29121	3240	3834
December .	102127	10294	9181	26032	3318	4319
Total..	819799	41953	341699	303693	33163	40011

Yearly Shipments by Railroads.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	100481	.....	1397	3883	508	5125
1872	206467	.....	8593	5411	2308	10683
1873.....	182245	.....	33610	4288	3747	10044
1874.....	166519	.....	114569	6976	3299	10879
1875.....	126262	.....	15790	17742	2524	7036
1876.....	120340	.....	26264	22460	5080	7131
1877.....	126570	.....	15973	28329	3951	7366
1878.....	131761	.....	91671	30483	9329	9483
1879.....	155831	.....	208851	47782	13783	12741
1880.....	194421	.....	152920	36285	11227	12874
1881.....	223989	.....	195524	61078	10056	14382
1882.....	359012	.....	191325	52652	9319	19698
1883.....	387598	.....	313879	61979	10466	24662
1884.....	443001	.....	590133	105973	14945	32056
1885.....	402381	.....	801162	115755	16253	33452
1886.....	370350	.....	538005	83234	25088	27050
1887.....	483372	.....	524492	103126	21352	31489
1888.....	682622	.....	413937	169932	19889	33213
1889.....	744510	.....	331434	174851	24567	36803
1890	923552	55851	558227	336207	25481	50704
1891.....	739093	38975	605457	178271	23958	39508
1892.....	801016	40900	591623	219230	22120	42621
1893.....	761576	28847	520694	196892	21394	39366
1894.....	764592	33130	496804	196061	26942	39210
1895.....	719704	28368	286340	287294	29214	34056
1896.....	819799	41953	341699	303693	33163	40011
Total..	11137064	268024	7970373	2849867	389963	631643

Total for Year by Roads.

RECEIPTS.

RAILROADS	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
H & St J..	11109	103	60797	7340	544	145
Wabash...	2988	317	12679	1368	842	37
Mo Pac....	259867	10823	535376	95883	5644	1994
Union Pac.	117192	1562	209895	149499	5304	948
K C F S & M	78637	2371	244428	48362	2441	733
KCStJ&CB	53862	1417	211980	26589	3807	593
AT&SF-WD	68295	43948	583870	491974	5073	3808
C & A.....	10309	245	65253	4975	1077	152
CRI&P-ED	3571	427	3368	2561	297	24
CRI&P-WD	189093	9526	270088	85151	3098	1230
C M & St P	28608	3698	33289	13016	518	167
K C N W..	18979	350	56247	521	1671	177
AT&SF-ED	5068	30	16254	2059	197	50
K C O & S.	18694	273	38779	4649	272	138
M K & T..	179691	17915	150470	32778	509	984
K C P & G	25627	1368	56184	7053	113	185
C Gt W ...	10108	1880	7249	1547	364	50
K C S B...	76	.....	.....	.....	.....	...
KC&IAL	.....	.....	.....	.....	.....	...
Total..	1696430	96253	2556206	975825	31771	11859

SHIPMENTS.

RAILROADS	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
H & St J..	44637	1619	32612	24343	215	219
Wabash...	87750	5938	74368	47602	10153	491
Mo Pac....	103830	6168	505	36228	3346	387
Union Pac.	50083	3518	.....	6626	93	177
K C F S & M	8943	989	.....	3699	10064	74
KCStJ&CB	105151	1326	9100	24516	95	423
AT&SF WD	53511	5253	21983	11019	2102	246
C & A.....	159744	1647	43143	4820	591	899
CRI&P-ED	22869	3832	6913	31535	109	112
CRI&P-WD	21975	5247	8	469	188	29
C M & St P.	52331	2040	101916	37182	35	340
K C N W..	13257	1077	.....	3215	3	48
AT&SF-ED	65077	1111	25867	57492	1105	344
K C O & S.	7135	565	.....	1555	27	57
M K & T..	10306	423	11539	855	4958	74
K C P & G	4893	579	.....	628	69	18
C Gt W....	8307	621	13685	11909	10	46
K C S B...	.....	.....	.....	.....	.....	...
KC&IAL	.....	.....	.....	.....	.....	...
Total..	819799	41953	341699	303693	33163	4001

Receipts of Cars for Years 1895 and 1896.

RAILROADS	1895	1896	Increase	Decrease
Hannibal & St. Joe	1546	1458	.....	88
Wabash	499	377	.....	122
Missouri Pacific	18782	19942	1160	.....
Union Pacific	8437	9488	1051	.....
K. C., Ft. Scott & Memphis	6630	7234	604	.....
K.C., St. J. & Council Bluffs	6942	5959	.....	983
Atch. Top. & S. F.–W. D.	30443	38008	7565	.....
Chicago & Alton	1699	1521	.....	178
Chicago, R. I. & P.–E. D.	444	242	.....	202
Chicago, R. I. & P.–W. D.	11048	12306	1258	.....
Chicago, Mil. & St. Paul	1811	1673	.....	138
Kansas City Northwestern	1783	1770	.....	13
Atch. Top. & S. F.–E. D.	684	504	.....	180
K. C., Osceola & Southern	1598	1384	.....	214
Missouri, Kansas & Texas	8980	9345	365	.....
K. C., Pittsburg & Gulf	1642	1878	236	.....
Chicago Great Western	390	502	112	.....
K. C. Suburban Belt	10	3	.....	7
K. C. & Ind. Air Line	.....	.....	.....	.....
Total	103368	113594	10226	.....

Shipments of Cars for Years 1895 and 1896.

RAILROADS	1895	1896	Increase	Decrease
Hannibal & St. Joe	2473	2191	.....	282
Wabash	4705	4912	207	.....
Missouri Pacific	4053	3974	.....	79
Union Pacific	1183	1776	593	.....
K. C., Ft. Scott & Memphis	1042	749	.....	293
K.C., St. J. & Council Bluffs	1806	4253	2447	.....
Atch. Top. & S. F.–W. D.	2181	2316	135	.....
Chicago & Alton	7526	8942	1416	.....
Chicago, R. I. & P.–E. D.	1061	1123	62	.....
Chicago, R. I. & P.–W. D.	474	791	317	.....
Chicago, Mil. & St. Paul	2288	3401	1113	.....
Kansas City Northwestern	242	481	239	.....
Atch. Top. & S. F.–E. D.	3336	3447	111	.....
K. C., Osceola & Southern	433	271	.....	162
Missouri, Kansas & Texas	684	740	56	.....
K. C., Pittsburg & Gulf	362	183	.....	179
Chicago Great Western	206	461	255	.....
K. C. Suburban Belt	1	.....	.....	1
K. C. & Ind. Air Line	.....	.....	.....	.....
Total	34056	40011	5955	.....

Driven Into Yards.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules
January	2032	334	3367	1713	5968
February	1409	301	2664	1946	4367
March	1601	613	3311	1053	2607
April	1127	312	3354	486	1534
May	1525	223	4240	1550	1390
June	1050	207	5422	1609	528
July	987	347	3686	1720	531
August	888	251	2609	1498	594
September	840	373	3860	659	1758
October	1460	305	5178	2042	2177
November	2604	349	4989	832	2179
December	2579	298	6689	2693	2445
Total	18102	3913	49369	17801	26076

Total Driven Into Yards Yearly.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules
1871	5667	.....	582	2836	191
1872	18156	.....	3305	1332	876
1873	21819	.....	13287	3424	2252
1874	22864	.....	14678	1814	1737
1875	21376	.....	6824	4946	1478
1876	18277	.....	13728	9195	2303
1877	18635	.....	13773	9639	1491
1878	15282	.....	27190	8344	4095
1879	13556	.....	26866	13408	6195
1880	11441	.....	32195	9403	6195
1881	12827	.....	47150	7182	4777
1882	14438	.....	21484	9530	3585
1883	18757	.....	22912	14598	9516
1884	15124	.....	26141	20308	11419
1885	14198	.....	31421	20697	8472
1886	12883	.....	33401	11985	10996
1887	12607	.....	25388	9819	8419
1888	15461	.....	17878	7269	8139
1889	15340	.....	20370	25849	10249
1890	18759	1882	27542	30930	12389
1891	20117	1839	26748	24452	9053
1892	15175	2185	21835	9929	9073
1893	12780	2282	22994	12989	13010
1894	15422	3407	34089	15331	17166
1895	17009	4218	37127	16812	22774
1896	18102	3913	49369	17801	26076
Total	416072	19726	618277	319822	211917

Driven Out of Yards.

FOR PACKERS' AND CITY USE.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules
January	67370	1614	235890	45023	5568
February	57090	1170	154357	50060	4153
March	59246	1405	171135	68098	2804
April	57196	1340	219055	84438	1504
May	63183	1640	216692	69917	1404
June	65598	7198	231754	46407	503
July	74886	12617	135657	46078	401
August	76894	10134	91853	34966	607
September	100936	8271	123994	65202	1301
October	118533	7139	196005	59908	2102
November	83825	3996	188473	70077	2000
December	69780	1807	298278	45553	2200
Total	894537	58331	2263143	685727	24547

Total Driven Out of Yards Yearly.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules
1871	20313	.....	38705	644	301
1872	30332	.....	95806	660	340
1873	45421	.....	186964	1663	455
1874	40550	.....	98145	1901	386
1875	47949	.....	47306	7568	111
1876	62916	.....	126916	32369	241
1877	89201	.....	177231	14004	345
1878	43788	.....	334684	6529	1465
1879	55530	.....	380943	13375	2043
1880	49860	.....	523928	14719	2863
1881	62145	.....	819923	18770	2548
1882	80509	.....	770581	28056	2288
1883	73000	.....	1065126	57201	9403
1884	90991	.....	1134154	131241	12147
1885	104196	.....	1557865	107333	8403
1886	120556	.....	1726318	89163	8010
1887	185690	.....	1899054	106365	8266
1888	372925	.....	1595313	181864	7850
1889	474885	.....	1741880	195027	9918
1890	549301	20862	2305127	199000	11653
1891	533156	37605	1995652	209641	7825
1892	676725	51256	1805114	218909	10312
1893	899671	57121	1427763	372385	13497
1894	922682	50126	2050784	393298	17211
1895	893419	47555	2170827	575806	23441
1896	894537	58331	2263143	685727	24547
Total	7420248	322856	28339252	3663218	185869

Hannibal & St. Joseph R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	896	4	6447	927	70	1
February	912	3	2803	696	68	1
March	887	6	2662		60	1
April	883	5	4339	434	65	1
May	999	6	3533	821	46	1
June	792	7	6628	1501		1
July	804	2	5086	893	18	1
August	783	1	4106	427	83	1
September	980	3	3881	204	37	1
October	698	61	5694	174	23	1
November	1406	2	5993	653	49	1
December	1069	3	9625	619	25	1
Total	11109	103	60797	7340	544	14

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	194		15516	917	138	3
1872	393		35097	521	569	7
1873	602		50981	494	364	10
1874	645		23256	427	359	7
1875	608		12388	1307	235	3
1876	750		14754	3154	292	3
1877	521		16943	366	424	3
1878	414		16693	2601	1174	4
1879	2258		10989	2412	1410	4
1880	1096		18396	944	863	4
1881	2026		20837	4810	299	7
1882	3818		29087	6375	199	7
1883	6576		39912	4926	444	9
1884	4399		36918	5734	1000	8
1885	2583		31694	5353	739	7
1886	2165		48492	2545	1002	9
1887	3111		42533	3182	1204	9
1888	6399		53211	2793	207	11
1889	8386		57903	4028	277	12
1890	10648	194	78425	4251	318	16
1891	10404	138	73696	6005	159	15
1892	9075	149	45972	5472	363	10
1893	9035	206	34590	6683	349	10
1894	12095	119	51709	10630	981	14
1895	9791	118	70244	9627	683	13
1896	11109	103	60797	7340	544	14
Total	119051	1027	991133	102897	14536	228

Hannibal & St. Joseph R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	6412	1	1506	1480	.....	330
February..	837	1	7221	2512	41	107
March	1279	.....	5597	484	43	114
April	1195	46	7786	1267	14	133
May	668	19	1663	2544	17	55
June.....	846	125	724	1508	.....	46
July	1438	224	2146	643	.....	80
August....	4620	274	1186	2200	13	197
September.	8806	252	1618	2181	31	352
October...	6609	388	3165	2012	10	285
November.	6222	289	.....	5265	.....	270
December.	5705	.....	.....	2247	46	222
Total...	44637	1619	32612	24343	215	2191

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	49278	.....	100	.....	37	2468
1872.....	86687	.....	1115	100	270	4373
1873.....	73953	.....	2316	617	248	3765
1874.....	55833	.....	27045	364	368	3358
1875.....	39595	.....	1652	1436	298	2109
1876.....	31446	.....	5585	2453	224	1732
1877.....	15674	.....	458	2954	99	848
1878.....	34908	.....	15173	8832	68	2191
1879.....	44364	.....	20392	9597	124	2815
1880.....	41673	.....	11723	536	141	2318
1881.....	65940	.....	13687	3916	364	3328
1882.....	97419	.....	10960	5017	479	4725
1883.....	99679	.....	2922	2325	430	5170
1884.....	91934	.....	33051	3970	258	5216
1885.....	84845	.....	22889	9136	388	4593
1886.....	73359	.....	21607	7966	274	4050
1887.....	118482	.....	6773	7344	531	5772
1888.....	105230	.....	2114	10477	835	4735
1889.....	96844	.....	48574	6775	1142	5355
1890.....	128403	8301	94998	13958	1021	7465
1891.....	74465	10878	44593	36939	842	3800
1892.....	108949	6127	85927	51151	959	5651
1893.....	75772	1204	71767	9826	307	3785
1894.....	80266	2816	54995	19101	281	4108
1895.....	48870	2297	25523	37059	590	2473
1896.....	44637	1619	32612	24343	215	2191
Total..	1868505	33242	658551	276192	10793	98394

The Wabash Railroad.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	298	5	1582	519	232	53
February	172	.....	700	22	192	28
March	509	3	833	.....	56	38
April	338	5	1565	.....	61	43
May	210	.....	1201	.....	68	31
June	209	2	950	27	21	24
July	115	.....	826	79	.....	19
August	256	1	445	202	66	25
September	130	.....	697	152	54	19
October	214	1	847	195	26	26
November	80	81	1076	.....	24	22
December	457	219	1957	172	42	49
Total	2988	317	12679	1368	842	377

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	222	.....	1106	64	72	38
1872	283	.....	1383	79	220	54
1873	896	.....	595	100	299	73
1874	1069	.....	1062	330	224	91
1875	1966	.....	2877	3787	62	202
1876	505	.....	708	1194	462	102
1877	774	.....	1408	560	467	142
1878	656	.....	1362	352	2687	287
1879	814	.....	3557	3968	3042	385
1880	1371	.....	4147	4909	1664	267
1881	1647	.....	8614	4720	1113	321
1882	4591	.....	7375	2959	334	333
1883	9967	.....	15138	2441	575	697
1884	4721	.....	10638	2672	892	447
1885	1820	.....	8289	1089	876	314
1886	2449	.....	20877	2399	1336	540
1887	3185	.....	21545	1777	716	568
1888	5030	.....	25404	2638	195	658
1889	2328	.....	17982	2761	486	417
1890	2626	70	20182	1939	504	442
1891	2858	36	20698	983	217	459
1892	2844	53	16474	1528	444	407
1893	2844	33	10704	1116	344	316
1894	4493	118	12722	4692	534	450
1895	2874	57	21693	4382	645	498
1896	2988	317	12679	1368	842	377
Total	65821	684	269219	54807	19252	8910

The Wabash Railroad.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	4864	.....	1793	1489	2559	326
February..	3863	88	8627	5019	1247	316
March	3820	318	2590	8765	661	251
April....	5070	5	8811	7338	317	333
May	6538	92	6118	1724	505	403
June.....	5706	549	8585	517	455	326
July	9032	340	13770	843	382	487
August....	13487	1666	10115	2087	579	653
September.	14795	927	10230	12136	790	788
October...	8182	783	3220	2543	982	428
November.	5753	524	365	1959	903	284
December.	6640	646	144	3182	773	317
Total..	87750	5938	74368	47602	10153	4912

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	26308	.....	147	919	140	1336
1872.....	87529	.....	2464	3017	315	4477
1873.....	82674	.....	19271	817	1831	4630
1874.....	59813	.....	42699	1992	1026	3924
1875.....	61580	.....	4430	1707	1107	3249
1876.....	68536	.....	14002	4552	553	3844
1877.....	81001	.....	5894	6687	572	4428
1878.....	63684	.....	42180	9439	420	4212
1879.....	33477	.....	88196	5341	363	3203
1880.....	19160	.....	34730	1817	519	1484
1881.....	31942	.....	35914	2842	600	2105
1882.....	61899	.....	66535	5435	758	3845
1883.....	73380	.....	53219	12062	1085	4563
1884.....	89351	.....	148848	26581	863	7044
1885.....	62519	.....	244839	23371	490	7059
1886.....	47029	.....	195089	21139	1649	5062
1887.....	97224	.....	238489	13484	2547	7963
1888.....	36185	.....	178261	13086	2360	3151
1889.....	55890	.....	62347	22742	7468	3195
1890.....	43440	2980	130516	37646	5544	3335
1891.....	65706	5971	248234	19837	4678	4896
1892.....	63056	12496	267176	14501	4277	5032
1893.....	100381	8677	181889	7236	3780	6346
1894.....	76000	9897	161161	3960	3280	5160
1895.....	84673	11868	88310	28179	7339	4705
1896.....	87750	5938	74368	47602	10153	4912
Total..	1660187	57827	2629208	335991	63717	113160

Missouri Pacific Railway.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	20328	292	51735	8758	1083	1826
February .	16785	170	38185	7062	882	1472
March	18045	854	37034	6594	711	1503
April.....	18066	448	52329	7810	189	1661
May	19838	302	58212	5896	328	1815
June.....	21655	1488	57410	2437	183	1897
July	24808	816	37910	6107	66	1648
August....	26040	1634	28631	9335	199	1571
September.	23424	1126	32909	14637	479	1567
October...	24857	1233	42058	10993	588	1655
November.	20089	896	39022	11648	572	1458
December.	25932	1564	59941	4906	364	1959
Total..	259867	10823	535376	95883	5644	19942

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	281	.....	9505	58	79	210
1872.....	27073	.....	20496	841	520	1862
1873.....	2000	.....	30933	480	320	743
1874.....	2135	.....	14096	2067	418	430
1875.....	1738	.....	4708	2637	172	221
1876.....	3139	.....	16844	4847	1572	650
1877.....	6115	.....	24622	2344	1268	924
1878.....	5494	.....	54136	3100	1428	1499
1879.....	10383	.....	32872	2289	2953	1874
1880.....	11618	.....	83228	5947	1656	2056
1881.....	20858	.....	318150	16700	2885	6160
1882.....	30692	.....	313668	8475	3271	6079
1883.....	43785	.....	419354	16031	4386	9513
1884.....	56909	.....	521898	33416	7025	11798
1885.....	51931	.....	675349	32309	7487	13776
1886.....	63507	.....	621576	25154	11895	13116
1887.....	100791	.....	793125	51354	8776	16790
1888.....	190346	.....	592711	53456	5150	17082
1889.....	210187	.....	557810	41765	3915	17996
1890.....	244022	5301	737317	24885	4065	21891
1891.....	214068	8785	728976	48967	2929	19713
1892.....	246063	12696	596621	72461	3586	19471
1893.....	258318	7355	468406	47404	3715	18348
1894.....	257419	7834	563481	53748	5428	19343
1895.....	265225	11296	519721	91636	5718	18792
1896.....	259867	10823	535376	95883	5644	19942
Total..	2583964	64090	9254979	738254	96261	276888

Missouri Pacific Railway.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	5124	230	.....	192	719	219
February .	6984	100	49	136	604	283
March	4994	670	.....	886	367	196
April.....	3416	147	.....	815	166	130
May	4655	194	516	9488	79	231
June.....	6550	357	.....	8363	138	272
July	5217	368	.....	1458	61	195
August....	11300	350	.....	2071	103	398
September.	15637	787	.....	2247	136	567
October...	12864	909	.....	5080	378	502
November.	13484	418	.....	714	298	481
December .	13605	1638	.....	4778	297	500
Total..	103830	6168	565	36228	3346	3974

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	22905	.....	805	860	28	1173
1872.....	24710	.....	2781	510	249	1310
1873.....	16142	.....	10533	700	500	1054
1874.....	42445	.....	25397	1555	625	2682
1875.....	16328	.....	4659	3452	364	968
1876.....	12477	.....	5224	3782	584	786
1877.....	16967	.....	8195	9753	211	1110
1878.....	24201	.....	28879	4830	510	1835
1879.....	25580	.....	61829	11713	1598	2577
1880.....	27289	.....	17242	7378	2021	1729
1881.....	20405	.....	48004	12944	2240	2008
1882.....	27664	.....	12232	18687	2253	1674
1883.....	26879	.....	10453	20808	3362	1784
1884.....	31974	.....	5415	15299	4793	1686
1885... ...	35891	.....	26719	21868	5483	2447
1886.....	46819	.....	7043	11636	8171	2713
1887.....	38221	.....	2091	26885	6057	2113
1888.....	36159	.....	4102	12608	3690	1709
1889.....	40936	.....	15932	11390	3396	2075
1890.....	53565	2066	2732	46137	5008	2543
1891.....	58597	1133	5877	7792	4505	2561
1892.....	43691	2312	2659	11162	3844	1969
1893.....	48801	1454	2927	9204	2027	2043
1894.	86390	2580	9336	12280	4803	3520
1895.....	107630	3983	1260	22262	3271	4053
1896.....	103830	6168	565	36228	3346	3974
Total..	1036496	19696	322891	341723	72939	54096

Union Pacific Railway.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	13004	111	24498	7667	754	1069
February..	7543	46	17449	21030	686	77
March	6790	55	17272	24589	498	735
April	7679	47	21624	8914	273	736
May	9185	82	21081	425	255	761
June.....	6166	47	24760	4139	174	692
July	7223	47	13835	2427	363	573
August....	10175	262	8600	9172	487	630
September.	13359	365	11369	25545	351	881
October...	12527	370	14635	13406	408	836
November.	11992	55	13125	20941	583	847
December.	11549	75	21647	11244	472	922
Total..	117192	1562	209895	149499	5304	9488

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	84597	.....	6204	544	152	4309
1872.....	135963	.....	13038	2054	324	7089
1873.....	153134	.....	28095	903	536	8254
1874.....	123935	.....	43391	2782	566	7149
1875.....	81348	.....	2419	7944	473	4229
1876.....	72225	.....	17986	10578	241	4133
1877.....	80111	.....	28200	9115	218	4804
1878.....	58695	.....	61124	9638	128	4367
1879.....	54429	.....	127810	7217	193	5064
1880.....	33507	.....	129856	4340	263	3925
1881.....	44512	.....	146702	8164	368	4669
1882.....	33108	.....	108266	5055	302	3400
1883.....	45601	.....	162036	17038	588	5510
1884.....	63253	.....	228355	37860	857	7821
1885.....	71057	.....	341126	35346	768	9790
1886.....	82740	.....	345421	34612	933	10148
1887.....	114156	.....	408953	50963	1976	12284
1888.....	86200	.....	180110	64590	3267	7079
1889.....	91438	.....	191404	87407	5666	7986
1890.....	138672	3055	295420	89964	5315	11385
1891.....	107607	2183	233406	83036	9061	8819
1892.....	138469	3745	261341	80729	8853	10775
1893.....	141874	3747	190993	73844	6716	9771
1894.....	146217	2905	260190	103028	5762	10768
1895.....	121832	2899	201271	79285	4716	8497
1896.....	117192	1562	209895	149499	5304	9488
Total..	2421872	20096	4223012	1055535	63646	191284

Union Pacific Railway.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	2244	60	.....	.....	9	78
February	2067	126	.....	.....	7	80
March	2770	304	.....	.....	12	98
April.	1790	170	.....	.....	3	59
May	1058	62	.....	.....	.....	37
June	1176	.....	.....	.....	.....	34
July	860	.....	.....	366	.....	29
August	813	.....	.....	258	.....	27
September.	7611	346	.....	477	17	275
October	10354	1063	.....	954	35	379
November.	9599	305	.....	4155	.....	347
December.	9741	1082	.....	416	10	333
Total..	50083	3518	.....	6626	93	1776

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	338	.....	287	2104	258	60
1872	1913	.....	1323	1775	1240	210
1873	1169	.....	1217	1768	926	154
1874	2754	.....	2492	2194	850	259
1875	1163	.....	2073	6879	535	206
1876	1302	.....	866	7577	2012	276
1877	786	.....	750	7476	1392	243
1878	1311	.....	1142	2687	3300	383
1879	2587	.....	4758	5949	5711	643
1880	4419	.....	3730	4791	3548	555
1881	3577	.....	1411	5375	1946	329
1882	8329	.....	358	5020	527	384
1883	19362	.....	1507	2923	770	757
1884	16739	.....	214	2019	1453	747
1885	19765	.....	220	1436	1816	943
1886	18081	.....	830	1396	2547	959
1887	10109	.....	257	2118	1852	579
1888	9602	.....	126	2691	1247	485
1889	15548	.....	361	830	478	679
1890	19089	609	.....	1581	211	751
1891	21803	110	659	.....	89	823
1892	28854	542	181	1275	465	1123
1893	26033	459	92	3861	264	990
1894	29474	257	75	2569	153	1054
1895	33335	491	.....	4832	48	1183
1896	50083	3518	.....	6626	93	1776
Total..	347525	5986	24929	87752	33731	16551

Kansas City, Ft. Scott & Memphis R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	7317	138	23393	6337	443	734
February .	7729	92	18081	4122	392	672
March	6412	166	18204	3617	192	586
April	8052	133	24287	1030	111	732
May	8989	149	29579	1418	121	834
June.....	5179	102	22303	5239	88	598
July	4146	79	16372	7527	62	485
August....	4467	70	11561	5488	56	399
September.	5654	280	12437	2605	110	422
October...	6340	197	18414	3261	222	510
November.	6462	303	16822	2388	334	487
December.	7890	662	32975	5330	310	775
Total..	78637	2371	244428	48362	2441	7234

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	20325	.....	1732	23	89	1057
1872.....	25744	.....	18885	541	104	1676
1873.....	19795	.....	47249	448	144	1948
1874.....	14708	.....	52723	98	119	1798
1875.....	12730	.....	7842	1166	55	810
1876.....	13344	.....	28766	1917	44	1281
1877.....	10466	.....	31825	997	50	1160
1878.....	12384	.....	62023	1267	109	1711
1879.....	18821	.....	81213	3080	254	2258
1880.....	17721	.....	91434	3608	326	2314
1881.....	19047	.....	109098	7225	565	2623
1882.....	20970	.....	59687	2046	532	1924
1883.....	29605	.....	113464	8550	610	3377
1884.....	33469	.....	142995	8348	792	3874
1885.....	33614	.....	178975	6814	689	4475
1886.....	44232	.....	233787	9680	826	5599
1887.....	38430	.....	162487	7254	988	4396
1888.....	59488	.....	171551	10504	1285	5257
1889.....	73565	.....	216300	14961	1703	6774
1890.....	76809	765	241994	14284	1592	7241
1891.....	55542	909	234980	19471	910	5947
1892.....	64447	2704	222340	25878	1589	6009
1893.....	65504	1788	166104	26105	1217	5416
1894.....	63740	2344	189379	36076	1082	5745
1895.....	67810	1984	217175	58775	2147	6630
1896.....	78637	2371	244428	48362	2441	7234
Total.	990947	12865	3328436	317478	20262	98582

Kansas City, Ft. Scott & Memphis R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	738	.....	.....	241	1428	85
February	643	1	.....	518	1770	99
March	467	51	.....	.....	762	48
April	349	106	.....	.....	442	34
May	99	105	.....	.....	357	23
June	176	1	.....	126	94	12
July	271	2	.....	.....	311	22
August	703	.....	.....	420	351	40
September	1717	146	.....	1328	803	106
October	1313	176	.....	287	1113	90
November	1041	193	.....	393	1280	88
December	1426	208	.....	386	1353	102
Total	8943	989	.....	3699	10064	749

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	338	.....	.....	.....	30	19
1872	2	.....	.....	.....	.....	.....
1873	414	.....	28	248	155	34
1874	430	.....	276	378	29	33
1875	517	.....	1628	865	38	71
1876	534	.....	90	1045	36	33
1877	1580	.....	65	.....	44	66
1878	670	.....	.....	1128	4	41
1879	177	.....	653	594	152	40
1880	1616	.....	59	1634	79	84
1881	1419	.....	897	770	196	100
1882	1471	.....	575	.....	120	78
1883	4721	.....	1219	406	211	240
1884	7303	.....	17	1748	916	384
1885	6555	.....	209	1887	1077	363
1886	5618	.....	1167	559	781	311
1887	5771	.....	790	859	1220	318
1888	8246	.....	393	1794	2467	450
1889	12418	.....	133	5388	3478	671
1890	13471	263	832	2412	5334	759
1891	8631	356	7203	1958	7791	747
1892	6246	532	87	3114	4775	480
1893	6898	163	876	4968	6528	603
1894	12697	514	1280	8437	7304	853
1895	20923	553	272	12924	4974	1042
1896	8943	989	.....	3699	10064	749
Total	137609	3370	18749	56815	57803	8569

Kansas City, St. J. & C. B. R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	7095	232	21929	3733	631	703
February..	6178	184	10596	7000	706	504
March	6757	167	12302	6878	773	577
April.....	5570	91	17587	1645	222	550
May	4913	41	12760	2049	283	458
June.....	3937	29	17602	733	89	472
July	2200	56	16068	318	108	357
August....	3090	32	19101	.....	38	422
September.	3455	283	20282	853	91	466
October...	3695	59	19547	1693	297	452
November.	2952	98	17289	455	192	391
December.	4020	145	26917	1232	377	607
Total..	53862	1417	211980	26589	3807	5959

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	1	.....	4989	.....	1	100
1872.....	438	.....	5233	196	12	130
1873.....	142	.....	22789	.....	163	471
1874.....	363	.....	14257	371	48	310
1875.....	327	.....	16769	260	37	356
1876.....	351	.....	17895	1259	129	388
1877.....	2465	.....	16855	747	63	471
1878.....	2852	.....	32614	298	325	884
1879.....	1966	.....	14644	2270	603	452
1880.....	1041	.....	23135	625	386	516
1881.....	1940	.....	62099	508	191	1136
1882.....	5198	.....	145713	249	257	2448
1883.....	14889	.....	235077	7699	405	4507
1884	10546	.....	242783	6303	1103	4403
1885.....	9032	.....	365322	7665	816	6217
1886.....	8540	.....	307406	8242	1198	5277
1887.....	10203	.....	285040	10589	852	4790
1888.....	12193	.....	178256	7174	279	3280
1889.....	21406	.....	198670	5130	911	4196
1890.....	47989	712	279288	9487	1556	6413
1891.....	34071	406	174610	12983	1658	4228
1892.....	47804	879	220285	2915	1377	5561
1893.....	52536	853	127786	6791	1586	4472
1894.....	105603	4114	236402	17262	3838	8079
1895.....	93478	4855	211902	21861	3662	6942
1896.....	53862	1417	211980	26589	3807	5959
Total..	539236	13237	3651799	157473	25263	81916

Kansas City, St. J. & C. B. R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	2096	.....	527	124	30	98
February	3125	9	.....	86	30	135
March	2503	.....	.....	487	2	108
April	1931	.....	1987	1026	1	114
May	2180	.....	5943	2830	11	166
June	3330	.....	643	3034	.....	160
July	6480	92	.....	751	.....	256
August	9762	80	.....	2613	4	403
September	21357	349	.....	1913	.....	832
October	16092	272	.....	2558	.....	625
November	17323	280	.....	3388	.....	652
December	18972	244	.....	5706	17	704
Total	105151	1326	9100	24516	95	4253

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	1064	.....	.....	.....	9	54
1872	5454	.....	742	.....	218	300
1873	7357	.....	163	.....	79	375
1874	5087	.....	16660	.....	395	609
1875	6461	.....	359	940	82	346
1876	5208	.....	178	267	758	302
1877	9315	.....	484	579	765	525
1878	5141	.....	3582	936	651	375
1879	11334	.....	20605	2320	1560	948
1880	7466	.....	42671	41	1241	1085
1881	5926	.....	7339	4209	741	385
1882	4125	.....	39	672	1382	233
1883	5693	.....	2529	265	637	299
1884	14330	.....	3067	688	921	622
1885	24609	.....	1756	992	872	1078
1886	43376	.....	7173	3512	2848	1997
1887	28538	.....	11894	6684	1310	1346
1888	32725	.....	4069	10443	703	1407
1889	32798	.....	2460	12919	421	1382
1890	26554	2525	4126	12226	314	1205
1891	34787	1607	3270	7504	371	1483
1892	39747	635	43433	15619	448	2040
1893	56571	382	64161	13117	269	2842
1894	40294	504	63633	9314	188	2063
1895	40848	89	17228	13823	110	1806
1896	105151	1326	9100	24516	95	4253
Total	599959	7068	330721	141586	17388	29360

Atchison, Topeka & Santa Fe R. R.—W. D.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	37541	360	59857	14840	828	2703
February .	28159	161	42300	22756	718	2088
March ...	28364	249	44903	40666	281	2165
April	23101	198	61165	65972	100	2827
May	28071	532	69285	69841	172	2506
June.....	29133	3383	65510	34489	97	2258
July	45829	7725	33395	30738	201	2459
August....	75840	8497	24689	18989	214	3439
September.	126404	8135	33215	57689	343	5555
October...	114143	5777	46129	52401	790	5159
November.	87331	4784	42417	50838	816	4159
December.	59035	4147	61005	32755	513	3310
Total..	682951	43948	583870	491974	5073	38008

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	1948	.....	671	.....	.....	119
1875.....	34400	.....	1486	2587	73	1781
1876.....	52503	.....	18592	21480	158	3076
1877.....	73094	.....	24388	16839	84	4191
1878.....	52399	.....	69116	6091	749	4065
1879.....	74849	.....	165627	25014	582	6813
1880.....	85834	.....	154488	11193	1186	7012
1881.....	121571	.....	145280	14804	1346	8249
1882.....	207574	.....	145151	31163	1802	12161
1883.....	177651	.....	178753	26798	1720	12012
1884.....	243561	.....	242842	78007	2197	16361
1885.....	176388	.....	343201	71849	2455	14718
1886.....	151791	.....	349396	61695	1718	13669
1887.....	263394	.....	384842	50154	3824	17787
1888.....	534916	.....	374151	156495	5985	27813
1889.....	596278	.....	368354	146029	7732	30182
1890.....	615605	45053	459612	257869	5433	34623
1891.....	516262	43607	475892	117744	3365	28764
1892.....	614971	51412	410339	133242	2880	30950
1893.....	696768	45585	435243	252392	3687	35174
1894.....	618663	40923	528228	206085	3118	32444
1895.....	557184	23789	524164	320917	3276	30443
1896.....	682951	43948	583870	491974	5073	38008
Total..	7150655	294317	6383686	2500421	58443	409778

Atchison, Topeka & Santa Fe R. R.—W. D.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	3445	123	2554	.....	392	178
February..	5729	70	1704	.....	322	238
March	4623	94	1137	257	352	186
April.....	3882	73	801	1284	104	147
May	3435	2	3127	1103	162	175
June.....	1325	12	3178	147	47	96
July	1820	7	1200	1011	40	88
August....	1611	103	3004	5	17	98
September	4573	768	954	1245	101	193
October...	8662	560	2554	817	118	345
November.	6408	1001	.....	2920	235	245
December.	7998	2440	1770	2230	212	327
Total..	53511	5253	21983	11019	2102	2316

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	39	.....	200	2463	91	39
1876.....	526	.....	284	1804	888	129
1877.....	679	.....	100	860	838	112
1878.....	1444	.....	531	2271	3897	386
1879.....	1841	.....	20	3459	4151	435
1880.....	4671	.....	2376	7999	2798	490
1881.....	8904	.....	5247	8677	2613	631
1882.....	15914	.....	5795	3365	1270	735
1883.....	32382	.....	4138	2414	1823	1283
1884.....	20443	.....	1421	1208	3152	959
1885.....	12759	.....	74	461	3611	788
1886.....	10704	.....	100	1033	5193	776
1887.....	9104	.....	6288	1634	4236	759
1888.....	22200	.....	765	3710	935	981
1889.....	34357	.....	1117	8792	802	1470
1890.....	34622	870	22315	10552	816	1816
1891.....	27477	658	18245	2160	639	1340
1892.....	35940	233	5396	5005	1706	1564
1893.....	39871	1357	1387	14335	2438	1686
1894.....	56873	2239	1785	8976	2615	2228
1895.....	55760	2115	4553	14579	4332	2181
1896.....	53511	5253	21983	11019	2102	2316
Total..	480021	12725	104120	116776	50946	23104

Chicago & Alton R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	777	32	6095	828	359	150
February..	737	15	3546	75	262	105
March	961	23	4566	102	162	122
April	1085	37	5404	221	18	139
May	1551	31	6589	148	154	179
June.....	962	18	5311	991	17	130
July	913	9	5396	507	.....	123
August....	672	2	2432	437	.....	74
September.	660	7	3479	56	38	89
October...	378	12	6582	137	.....	109
November.	760	40	6013	697	31	123
December.	853	19	9840	776	36	188
Total..	10309	245	65253	4975	1077	1521

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	394	.....	2287	939	351	96
1880.....	2380	.....	6160	835	381	251
1881.....	3832	.....	13530	4540	346	417
1882.....	6000	.....	13892	2380	359	482
1883.....	6177	.....	26676	3178	521	780
1884.....	6625	.....	29478	2585	714	809
1885.....	3323	.....	22597	3224	1031	617
1886.....	3828	.....	32338	3744	1829	802
1887.....	3561	.....	38513	3080	1457	845
1888.....	8098	.....	56419	4713	338	1235
1889.....	9067	.....	66250	5275	269	1385
1890.....	8002	294	65474	3642	767	1348
1891.....	10341	186	58731	4269	560	1382
1892.....	7646	399	48107	4841	874	1105
1893.....	8159	402	41746	6262	762	1077
1894.....	12180	391	63906	7054	958	1643
1895.....	10979	334	69514	8113	2082	1609
1896.....	10309	245	65253	4975	1077	1521
Total..	120901	2251	720871	73649	14676	17494

Chicago & Alton R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	12604	61	546	401	192	715
February..	8669	21	4182	845	111	537
March	10174	2	1621	.....	71	611
April	12853	.....	1072	194	9	776
May	15359	50	.....	.....	7	921
June.....	15770	93	2171	127	15	921
July	13138	86	8087	122	12	759
August....	16518	317	8421	165	72	931
September.	18252	599	9691	1881	.....	985
October...	14620	41	6199	688	28	726
November.	11361	111	191	135	26	530
December.	10426	266	962	262	48	530
Total..	159744	1647	43143	4820	591	8942

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	36036	.....	12365	3609	46	2008
1880.....	75186	.....	35321	6449	329	4311
1881.....	62036	.....	79196	11461	761	4252
1882.....	105459	.....	94290	12132	1369	6298
1883.....	94394	.....	235739	17118	1395	9056
1884.....	117411	.....	383232	51408	1078	12617
1885.....	115714	.....	499350	37501	898	13940
1886.....	106402	.....	291901	32236	810	9856
1887.....	140069	.....	189010	39503	2039	9810
1888.....	185701	.....	192778	87611	4710	9533
1889.....	110389	.....	114877	65596	4240	5683
1890	99289	15145	95168	92430	3001	6288
1891.....	85765	4024	107024	13557	2473	4902
1892.....	88594	9645	66715	14563	1896	4888
1893.....	131050	565	21693	12456	985	6071
1894.....	118388	6438	35172	5346	754	5896
1895.....	144869	2310	42477	10070	439	7526
1896.....	159744	1647	43143	4820	591	8942
Total..	1976496	39774	2539451	517866	27814	131877

Chicago, Rock Island & Pacific Ry.—E. D.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	230	98	419	323	30	2
February..	608	8	26	142	.....	2
March	463	9	789	213	20	3
April.....	325	.....	112	.....	38	1
May	533	2	110	566	51	2
June.....	96	.....	192	236	14	1
July	94	.....	137	242	.....	1
August....	213	2	321	144	.....	1
September.	249	106	194	.....	.....	1
October...	132	.....	339	100	22	1
November.	346	134	136	.....	44	2
December.	282	68	593	595	78	2
Total..	3571	427	3368	2561	297	24

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871... ...	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	585	.....	425	6809	428	11
1881.....	1103	.....	3431	3357	238	13
1882.....	3294	.....	8347	3717	153	24
1883.....	13433	.....	10469	933	389	59
1884.....	6576	.....	3731	646	902	36
1885.....	1584	.....	1085	169	827	13
1886.....	1864	.....	24311	1121	736	49
1887.....	1603	.....	10566	692	604	27
1888.....	1972	.....	10289	1486	576	28
1889.....	1972	.....	16213	371	216	31
1890.....	4891	105	25321	534	223	54
1891.....	4228	103	14825	103	191	38
1892.....	2091	53	3569	343	246	15
1893.....	1212	32	1012	1048	162	9
1894.....	4659	95	5883	2972	859	37
1895.....	7791	162	5331	3997	608	44
1896	3571	427	3368	2561	297	24
Total..	62429	977	148176	30859	7655	517

Chicago, Rock Island & Pacific Ry.—E. D.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	687	.....	.....	273	.....	28
February .	501	.....	543	2428	17	37
March	2696	.....	1679	4737	.....	162
April	176	.....	.....	2427	20	15
May	964	.....	.....	126	7	42
June.....	980	247	.....	1602	.....	54
July	1423	166	1113	2160	.....	70
August....	2515	1188	1523	2624	.....	135
September.	5432	757	2055	5366	15	247
October...	3733	508	.....	2034	29	153
November.	1901	742	.....	5144	1	94
December.	1861	224	.....	2614	20	86
Total..	22869	3832	6913	31535	109	1123

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	12139	.....	5068	1250	71	717
1881.....	21449	.....	3829	3118	514	1099
1882.....	30251	.....	.....	104	771	1435
1883.....	21251	.....	419	3145	423	1106
1884.....	45272	.....	14322	2445	721	2393
1885.....	36513	.....	5106	19010	801	2058
1886.....	16404	.....	13095	3411	1336	1119
1887.....	31950	.....	68661	3854	1154	2631
1888.....	32299	.....	3620	2051	1178	1504
1889.....	53824	.....	.....	7259	599	2499
1890.....	22788	340	622	17949	665	1105
1891.....	18452	161	93	15004	405	849
1892.....	26313	100	816	14618	347	1222
1893.....	24168	924	10928	10641	388	1226
1894.....	50856	316	10019	20865	288	2720
1895.....	20873	148	3255	31575	259	1061
1896.....	22869	3832	6913	31535	109	1123
Total..	487671	5821	146766	187834	10029	25867

Chicago, Rock Island & Pacific Ry.—W.D.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	12900	72	29537	3153	615	106
February	12865	89	21555	5191	378	93
March	9169	50	20591	8418	434	78
April	6601	58	25717	21604	114	70
May	9053	24	27137	9144	130	87
June	14981	1347	26732	3758	72	105
July	13781	1279	14630	3164	.....	70
August	15500	1410	13479	4299	151	84
September	28406	2061	16064	5107	255	137
October	21927	1562	23348	3180	339	136
November	21014	643	19219	8502	285	114
December	22896	931	32079	9631	325	141
Total	189093	9526	270088	85151	3098	1230

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871						
1872						
1873						
1874						
1875						
1876						
1877						
1878						
1879						
1880						
1881						
1882						
1883						
1884						
1885						
1886						
1887	8652	.....	37166	708	63	90
1888	92775	.....	194660	24094	992	683
1889	126562	.....	200219	29233	1502	830
1890	177975	10062	302821	35974	3121	1199
1891	151107	9714	251480	22990	1869	994
1892	192142	8926	287279	25254	1542	1211
1893	241529	12437	232910	49638	1427	1331
1894	238328	11984	298383	85995	1787	1307
1895	185427	11111	219475	144430	2533	1104
1896	189093	9526	270088	85151	3098	1230
Total	1603584	73760	2294481	503467	17934	10044

Chicago, Rock Island & Pacific Ry.—W. D.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	889	153	.....	130	.....	35
February .	1817	172	.....	.....	26	64
March	1202	409	.....	.....	18	45
April.....	1018	.....	5	.....	66	38
May	1447	120	.....	.....	13	43
June.....	313	57	.....	.....	.....	12
July	432	.....	.....	.....	.....	13
August....	1403	.....	.....	.....	.....	47
September.	2788	858	.....	.....	4	106
October...	3678	389	.....	339	6	130
November.	2963	1196	.....	.....	52	104
December.	4025	1893	3	.....	3	154
Total..	21975	5247	8	469	188	791

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	548	.....	.....	248	38	29
1888.....	4308	.....	180	354	239	180
1889.....	8333	.....	442	1161	143	307
1890.....	8226	210	.....	.....	35	293
1891.....	8941	244	.....	201	218	328
1892.....	9834	280	1	854	709	405
1893.....	12818	227	210	2638	675	499
1894.....	12102	1114	105	1126	942	482
1895.....	12547	554	.....	579	480	474
1896.....	21975	5247	8	469	188	791
Total..	99632	7876	946	7630	3667	3788

Chicago, Milwaukee & St. Paul Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	2711	142	4181	1165	48	16
February .	3971	266	1906	1484	74	17
March	5669	801	1564	943	46	22
April.....	2573	330	2806	610	21	13
May	2252	250	2580	2574	.....	13
June	1179	216	1706	1472	22	9
July	1657	60	3025	1121	.....	12
August....	1064	296	1362	1311	25	7
September.	1312	402	1358	274	25	7
October...	1542	219	2828	341	69	11
November.	2816	331	2790	680	76	16
December.	1862	385	7183	1041	112	19
Total..	28608	3698	33289	13016	518	167

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	183	.....	3692	80	9	7
1888.....	5725	.....	32783	3494	240	76
1889.....	5965	.....	36410	1675	718	79
1890.....	7820	240	43165	3282	547	91
1891.....	6359	166	34847	3782	276	73
1892.....	4766	142	29408	7067	110	62
1893.....	6746	82	14432	3681	234	53
1894.....	16940	686	35398	9667	609	132
1895.....	26697	1222	46617	11977	948	181
1896.....	28608	3698	33289	13016	518	167
Total..	109809	6236	310041	57721	4209	992

Chicago, Milwaukee & St. Paul Ry.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	9953	153	8877	4050	.....	585
February..	9752	2	3629	10468	9	574
March	7261	95	2253	5055	.....	409
April	701	.....	11990	9866	19	159
May	1290	.....	25908	2221	6	296
June.....	1575	106	14348	1766	.....	203
July	2726	76	7540	840	.....	178
August ...	4811	279	16596	768	.....	331
September.	5077	483	9210	1037	.....	285
October...	2750	336	1518	943	.....	126
November.	2935	249	.....	168	.....	118
December.	3500	261	547	.....	1	137
Total..	52331	2040	101916	37182	35	3401

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	1117	.....	.....	.....	.....	48
1888.....	105614	.....	13504	10752	404	4618
1889.....	142882	.....	57560	7087	1099	7259
1890.....	184839	4081	100578	45073	890	10340
1891.....	103639	2621	29484	30407	412	5883
1892.....	96083	1749	39741	46442	158	6002
1893.....	76859	2074	72807	48325	111	4582
1894.....	48661	1360	19258	37433	105	2652
1895.....	45954	1584	20623	43792	39	2288
1896.....	52331	2040	101916	37182	35	3401
Total..	858979	15509	455471	306493	3253	47073

Kansas City Northwestern R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	2340	74	5154	388	457	216
February .	1717	21	3783	.....	313	132
March ...	1506	49	3648	.....	146	132
April	1747	9	3350	.....	96	132
May	2541	49	5508	28	109	201
June	1894	17	6090	30	20	173
July	1150	17	3998	26	.....	116
August....	1141	3	4032	.....	13	114
September.	827	13	4019	.....	76	99
October...	1149	65	6250	.....	223	149
November.	1393	20	4203	48	88	127
December.	1574	13	6212	1	130	165
Total..	18979	350	56247	521	1671	1770

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	9198	.....	36717	922	182	950
1889.....	16493	.....	51517	2070	168	1545
1890.....	33319	410	121989	768	483	3327
1891.....	17737	375	76038	867	217	1844
1892.....	23876	703	74862	861	624	2160
1893.....	26476	631	54407	2000	561	2032
1894.....	25876	539	61512	413	670	2064
1895.....	19225	610	66718	1191	985	1783
1896.....	18979	350	56247	521	1671	1770
Total..	191179	3618	600007	9613	5561	17475

Kansas City Northwestern R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	424	.....	.....	.....	.....	15
February..	1167	2	.....	450	1	46
March	399	52	.....	.....	.....	17
April	131	51	.....	.....	.....	6
May	455	122	.....	.....	.....	16
June.....	652	15	.....	.....	.....	18
July	691	.....	.....	.....	.....	23
August....	1387	.....	.....	.....	1	50
September.	2224	235	.....	.....	.....	80
October...	1671	159	.....	2765	1	70
November.	1621	192	.....	.....	.....	55
December.	2435	249	.....	.....	.....	85
Total..	13257	1077	.....	3215	3	481

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	1474	.....	.....	112	25	55
1889.....	2671	.....	.....	71	15	101
1890.....	6749	193	.....	300	57	249
1891.....	3995	170	70	.....	7	149
1892.....	4779	215	200	304	85	196
1893.....	8337	66	.....	1378	15	312
1894.....	6763	2	.....	.....	49	248
1895.....	6264	103	.....	1030	64	242
1896.....	13257	1077	.....	3215	3	481
Total..	54289	1826	270	6405	320	2033

Atchison, Topeka & Santa Fe R. R.—E. D.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	354	2	2089	188	80	50
February..	210	1	1188	215	16	34
March	751	8	1603	354	51	64
April.....	611	1	1460	137	.....	49
May	862	3	1612	63	.....	60
June.....	384	4	1086	160	16	39
July	561	.....	1048	265	17	45
August....	259	.....	327	199	.....	33
September.	167	8	782	.....	.....	30
October...	117	.....	551	93	6	17
November.	329	1	1001	51	.....	31
December.	463	2	3507	334	11	72
Total .	5068	30	16254	2059	197	504

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886..	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	1289	.. ...	9586	531	258	229
1889.....	2895	.....	19357	1158	212	439
1890.....	3058	140	22133	415	49	466
1891.....	3555	57	25014	1055	77	522
1892.....	2834	75	15743	1234	151	375
1893.....	4255	14	9628	2021	230	379
1894.	5837	53	18298	3233	486	602
1895.....	5888	91	27269	3399	325	684
1896.....	5068	30	16254	2059	197	504
Total..	34679	460	163282	15105	1985	4200

Atchison, Topeka & Santa Fe R. R.—E. D.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January..	2691	.....	10905	.....	23	203
February .	1587	1	3826	594	162	133
March	1498	.....	170	1846	192	86
April	1877	3	966	9481	209	146
May	3148	.....	6200	10489	166	279
June.....	2208	.....	391	5200	74	143
July	8675	.....	3086	4386	106	397
August...	8594	118	79	4036	45	379
September.	9469	395	78	9144	45	454
October...	7927	75	166	5183	59	352
November.	6905	202	.....	3432	8	321
December .	11098	317	.....	3701	16	554
Total..	65077	1111	25867	57492	1105	3447

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	102208	.....	14025	14243	1095	4378
1889.....	131809	.....	1427	23772	1125	5553
1890.....	271666	18033	63308	54497	2030	13475
1891.....	189441	10974	108212	29373	1315	9577
1892.....	238195	5922	49276	23681	2093	11171
1893.....	140978	10883	84004	47473	2643	7702
1894.....	119332	3867	123704	38248	1530	6737
1895.....	63092	1310	69175	46076	1265	3336
1896.....	65077	1111	25867	57492	1105	3447
Total..	1321798	52100	539998	384855	14201	65870

Kansas City, Osceola & Southern Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	1406	14	3632	897	32	118
February..	1268	32	2912	224	35	98
March ...	1777	23	2864	17	30	115
April.....	2151	43	4654	187	19	160
May	1734	22	3562	163	.....	130
June.....	1266	17	4645	180	1	122
July	2180	13	2848	608	23	141
August....	1186	21	2195	222	.....	82
September.	1244	33	1802	32	76	84
October...	961	24	3493	110	17	87
November.	1464	11	2135	271	39	94
December.	2057	20	4037	1738	.....	153
Total..	18694	273	38779	4649	272	1384

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	363	.....	1243	114	.....	33
1889.....	7187	.....	28277	565	92	749
1890.....	12147	116	44745	954	20	1224
1891.....	13541	234	43171	3230	36	1249
1892.....	16780	379	46981	2927	46	1411
1893.....	18281	280	41735	3131	124	1440
1894.....	21066	737	45893	6904	115	1611
1895.....	19764	338	45813	8375	120	1598
1896.....	18694	273	38779	4649	272	1384
Total...	127823	2357	336637	30849	825	10699

Kansas City, Osceola & Southern Ry.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	430	.....	.....	67	.....	18
February	444	.....	.....	.....	5	18
March	76	.....	.....	.....	21	5
April	109	.....	.....	.....	.....	5
May	334	.....	.....	.....	.....	11
June	153	.....	.....	.....	1	5
July	161	.....	.....	.....	.....	6
August	918	.....	.....	.....	.....	31
September	1015	.....	.....	573	.....	42
October	879	.....	.....	682	.....	38
November	1251	20	.....	233	.....	39
December	1365	545	.....	.....	.....	53
Total	7135	565	.....	1555	27	271

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	.....	.....	.....	.....	.....	.....
1872	.....	.....	.....	.....	.....	.....
1873	.....	.....	.....	.....	.....	.....
1874	.....	.....	.....	.....	.....	.....
1875	.....	.....	.....	.....	.....	.....
1876	.....	.....	.....	.....	.....	.....
1877	.....	.....	.....	.....	.....	.....
1878	.....	.....	.....	.....	.....	.....
1879	.....	.....	.....	.....	.....	.....
1880	.....	.....	.....	.....	.....	.....
1881	.....	.....	.....	.....	.....	.....
1882	.....	.....	.....	.....	.....	.....
1883	.....	.....	.....	.....	.....	.....
1884	.....	.....	.....	.....	.....	.....
1885	.....	.....	.....	.....	.....	.....
1886	.....	.....	.....	.....	.....	.....
1887	.....	.....	.....	.....	.....	.....
1888	.....	.....	.....	.....	.....	.....
1889	2293	.....	.....	982	15	103
1890	5889	103	.....	857	.....	236
1891	5921	51	162	455	33	230
1892	4062	.....	.....	1271	24	170
1893	5141	202	153	835	25	207
1894	9965	429	1032	3392	29	400
1895	11654	263	.....	2948	29	433
1896	7135	565	.....	1555	27	271
Total	52060	1613	1347	12295	182	2050

Missouri, Kansas & Texas Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	10758	228	12817	988	142	657
February .	12021	126	12203	865	47	705
March	11704	127	10884	1071	45	687
April	7720	265	16954	3752	15	590
May	9671	378	15774	4667	.....	640
June.....	15022	2045	14448	14070	46	877
July	20237	3181	9015	2063	9	927
August....	14769	2247	8017	1484	46	697
September.	20472	2888	8241	1799	8	872
October ..	20192	2211	12238	296	6	882
November.	15735	1805	12538	524	49	784
December.	21390	2414	17341	1199	96	1047
Total..	179691	17915	150470	32778	509	9345

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874	1428	.....	1495	.....	62	199
1875.....	724	.....	4641	378	3	134
1876.....	6	.....	476	.....	4	9
1877.....	618	.....	64	368	73	34
1878.....	19	.....	.....	.....	3	2
1879.....	144	.....	321	.....	147	20
1880.....	21	.....	236	.....	328	21
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	.....	.....	.....	.....	.....	.....
1889.....	31274	.....	26874	2495	447	1633
1890.....	69887	8168	99743	56691	745	4699
1891.....	96495	7713	96826	36104	1011	5378
1892..	80836	7289	70064	62664	703	4522
1893.....	102142	10090	68804	72133	710	5400
1894.....	108860	5805	87683	21065	213	5543
1895.....	171845	10966	121663	73843	727	8080
1896.....	179691	17915	150470	32778	509	9345
Total..	843990	67946	729360	358519	5685	4989

Missouri, Kansas & Texas Ry.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	1047	.....	66	.....	821	75
February	974	.....	.....	.....	642	63
March	731	137	82	.....	695	63
April	675	.....	.....	.....	385	41
May	74	.....	.....	.....	316	19
June	169	.....	.....	.....	112	11
July	229	.....	.....	.....	32	11
August	521	.....	1400	.....	75	40
September	1430	68	.....	.....	458	70
October	1655	101	773	606	463	84
November	1088	117	3463	.....	437	106
December	1713	.....	5755	249	522	157
Total	10306	423	11539	855	4958	740

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	.....	.....	.....	.....	.....	.....
1872	.....	.....	.....	.....	.....	.....
1873	.....	.....	.....	.....	.....	.....
1874	.....	.....	.....	.....	.....	.....
1875	58	.....	12	.....	7	5
1876	28	.....	.....	.....	14	3
1877	186	.....	.....	20	.....	9
1878	334	.....	10	303	393	40
1879	97	.....	33	3	13	7
1880	1	.....	.....	.....	385	26
1881	.....	.....	.....	.....	.....	.....
1882	.....	.....	.....	.....	.....	.....
1883	.....	.....	.....	.....	.....	.....
1884	.....	.....	.....	.....	.....	.....
1885	.....	.....	.....	.....	.....	.....
1886	.....	.....	.....	.....	.....	.....
1887	.....	.....	.....	.....	.....	.....
1888	.....	.....	.....	.....	.....	.....
1889	2518	.....	26204	87	146	471
1890	4962	132	43032	589	555	844
1891	3309	16	30120	643	124	535
1892	3348	93	29933	715	300	501
1893	3178	4	178	110	722	150
1894	8184	664	824	1601	4524	514
1895	10989	384	2865	3605	5607	684
1896	10306	423	11539	855	4958	740
Total	47498	1716	144750	8531	17748	4529

Kansas City, Pittsburg & Gulf R. R.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	1807	35	4684	365	.....	131
February..	1488	78	3290	297	91	120
March	2530	46	4467	556	.....	184
April	2179	30	5540	413	.....	177
May	2932	25	5959	247	.....	215
June.....	2300	20	6407	1343	.....	204
July	939	101	5431	1406	2	126
August....	1157	11	4229	501	.....	106
September.	1812	99	3669	275	2	119
October...	1320	50	3726	375	2	103
November.	3302	320	4288	153	13	170
December.	3861	553	4494	1122	3	190
Total..	25627	1368	56184	7058	113	1879

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	.....	.....	.....	.....	.....	.....
1889.....	.....	.....	.....	.....	.....	.....
1890.....	.....	.....	.....	.....	.....	.....
1891.....	3745	64	21582	109	2	454
1892.....	6766	277	19389	580	42	557
1893.....	10347	188	23605	1000	153	894
1894.....	28390	1281	45020	3622	246	1781
1895.....	23419	1756	45591	5358	316	1648
1896.....	25627	1368	56184	7053	113	1879
Total..	98294	4934	211371	17722	872	7146

Kansas City, Pittsburg & Gulf R. R.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	443	.....	.....	124	.....	16
February	54	.....	.....	.....	.....	2
March	294	84	.....	.....	19	12
April	86	.....	.....	.....	.....	3
May	57	.....	.....	.....	1	3
June	145	4	.....	.....	12	7
July	194	.....	.....	.....	19	8
August	329	118	.....	.....	18	14
September	481	130	.....	.....	.....	19
October	1192	63	.....	225	.....	44
November	695	180	.....	279	.....	27
December	923	.....	.....	.....	.....	28
Total	4893	579	.....	628	69	183

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	.....	.....	.....	.....	.....	.....
1872	.....	.....	.....	.....	.....	.....
1873	.....	.....	.....	.....	.....	.....
1874	.....	.....	.....	.....	.....	.....
1875	.....	.....	.....	.....	.....	.....
1876	.....	.....	.....	.....	.....	.....
1877	.....	.....	.....	.....	.....	.....
1878	.....	.....	.....	.....	.....	.....
1879	.....	.....	.....	.....	.....	.....
1880	.....	.....	.....	.....	.....	.....
1881	.....	.....	.....	.....	.....	.....
1882	.....	.....	.....	.....	.....	.....
1883	.....	.....	.....	.....	.....	.....
1884	.....	.....	.....	.....	.....	.....
1885	.....	.....	.....	.....	.....	.....
1886	.....	.....	.....	.....	.....	.....
1887	.....	.....	.....	.....	.....	.....
1888	.....	.....	.....	.....	.....	.....
1889	.....	.....	.....	.....	.....	.....
1890	.....	.....	.....	.....	.....	.....
1891	1847	.....	.....	.....	.....	61
1892	715	.....	.....	.....	.....	24
1893	1632	44	.....	.....	46	63
1894	5847	132	429	607	91	215
1895	9812	135	13	1939	349	362
1896	4893	579	.....	628	69	183
Total	24246	890	442	3174	555	908

Chicago Great Western Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	1309	228	953	97	167	69
February .	1172	155	332	372	40	54
March	2033	349	191	120	.....	71
April	934	333	640	.....	52	46
May	607	151	1021	.....	36	36
June	577	9	187	75	.....	28
July	298	3	209	.....	.....	13
August....	186	1	225	.....	23	12
September.	550	27	616	73	.....	30
October...	537	146	992	114	.....	34
November.	1158	203	364	144	23	48
December .	747	275	1519	552	23	61
Total..	10108	1880	7249	1547	364	502

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	.....	.....	.....	.....	.....	.....
1889.....	.....	.....	.....	.....	.....	.....
1890.....	.....	.....	.....	.....	.....	.....
1891.....	2780	55	7332	610	149	235
1892.....	2493	11	6821	343	2	196
1893.....	1926	16	3274	1279	110	151
1894.....	3159	17	8880	1778	385	283
1895.....	6983	392	6409	735	342	390
1896.....	10108	1880	7249	1547	864	502
Total..	27449	2371	39965	6292	1852	1757

Chicago Great Western Ry.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January...	473	.....	.....	.....	.....	18
February..	611	.....	.....	.....	.....	30
March.....	301	.....	.....	.....	.....	11
April.....	396	.....	818	.....	.....	22
May	182	.....	2874	514	10	34
June.....	244	.....	5191	1846	.....	49
July.....	510	60	1433	2591	.....	38
August....	620	78	2684	118	.....	41
September.	1630	152	424	2542	.....	69
October...	692	.....	172	3101	.....	46
November.	1954	50	89	936	.....	73
December.	694	281	.....	261	.....	30
Total..	8307	621	13685	11909	10	461

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871.....	.....	.....	.....	.....	.....	.....
1872.....	.....	.....	.....	.....	.....	.....
1873.....	.....	.....	.....	.....	.....	.....
1874.....	.....	.....	.....	.....	.....	.....
1875.....	.....	.....	.....	.....	.....	.....
1876.....	.....	.....	.....	.....	.....	.....
1877.....	.....	.....	.....	.....	.....	.....
1878.....	.....	.....	.....	.....	.....	.....
1879.....	.....	.....	.....	.....	.....	.....
1880.....	.....	.....	.....	.....	.....	.....
1881.....	.....	.....	.....	.....	.....	.....
1882.....	.....	.....	.....	.....	.....	.....
1883.....	.....	.....	.....	.....	.....	.....
1884.....	.....	.....	.....	.....	.....	.....
1885.....	.....	.....	.....	.....	.....	.....
1886.....	.....	.....	.....	.....	.....	.....
1887.....	.....	.....	.....	.....	.....	.....
1888.....	.....	.....	.....	.....	.....	.....
1889.....	.....	.....	.....	.....	.....	.....
1890.....	.....	.....	.....	.....	.....	.....
1891.....	26317	1	2211	12441	56	1344
1892.....	2610	19	82	14955	34	183
1893.....	3088	162	7622	10494	171	259
1894.....	2488	1	13996	22806	6	358
1895.....	2082	181	10786	12022	19	206
1896.....	8307	621	13685	11909	10	461
Total..	44892	985	48382	84627	296	2811

Kansas City Suburban Belt Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January	.....	.....	.....	.....	.....	.....
February	.....	.....	.....	.....	.....	.....
March	.....	.....	.....	.....	.....	.....
April	.....	.....	.....	.....	.....	.....
May	76	.....	.....	.....	.....	3
June	.....	.....	.....	.....	.....	.....
July	.....	.....	.....	.....	.....	.....
August	.....	.....	.....	.....	.....	.....
September	.....	.....	.....	.....	.....	.....
October	.....	.....	.....	.....	.....	.....
November	.....	.....	.....	.....	.....	.....
December	.....	.....	.....	.....	.....	.....
Total	76	.....	.....	.....	.....	3

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871	.....	.....	.....	.....	.....	.....
1872	.....	.....	.....	.....	.....	.....
1873	.....	.....	.....	.....	.....	.....
1874	.....	.....	.....	.....	.....	.....
1875	.....	.....	.....	.....	.....	.....
1876	.....	.....	.....	.....	.....	.....
1877	.....	.....	.....	.....	.....	.....
1878	.....	.....	.....	.....	.....	.....
1879	.....	.....	.....	.....	.....	.....
1880	.....	.....	.....	.....	.....	.....
1881	.....	.....	.....	.....	.....	.....
1882	.....	.....	.....	.....	.....	.....
1883	.....	.....	.....	.....	.....	.....
1884	.....	.....	.....	.....	.....	.....
1885	.....	.....	.....	.....	.....	.....
1886	.....	.....	.....	.....	.....	.....
1887	.....	.....	.....	.....	.....	.....
1888	.....	.....	.....	.....	.....	.....
1889	.....	.....	.....	.....	.....	.....
1890	.....	.....	.....	.....	.....	.....
1891	.....	.....	257	.....	.....	4
1892	.....	.....	47	.....	.....	1
1893	81	.....	.....	.....	.....	4
1894	234	.....	.....	.....	.....	9
1895	233	.....	.....	.....	.....	10
1896	76	.....	.....	.....	.....	3
Total	624	.....	304	.....	.....	31

Kansas City Suburban Belt Ry.

SHIPMENTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Total						

YEARLY SHIPMENTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871						
1872						
1873						
1874						
1875						
1876						
1877						
1878						
1879						
1880						
1881						
1882						
1883						
1884						
1885						
1886						
1887						
1888						
1889						
1890						
1891						
1892						
1893						
1894	12					2
1895	29					1
1896						
Total	41					3

K. C. & Independence Air Line Ry.

RECEIPTS.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Total						

YEARLY RECEIPTS.

YEAR	Cattle	Calves	Hogs	Sheep	Horses & Mules	Cars
1871						
1872						
1873						
1874						
1875						
1876						
1877						
1878						
1879						
1880						
1881						
1882						
1883						
1884						
1885						
1886						
1887						
1888						
1889						
1890						
1891						
1892						
1893						
1894	12		21			2
1895						
1896						
Total	12		21			2

Southern Kansas Railway.

YEARLY RECEIPTS.

YEAR	Cattle	Hogs	Sheep	Horses & Mules	Cars
1871	9540	1402	85	87	511
1872	28752	7202	507	23	1589
1873	29301	27886	126	124	2032
1874	37985	46903	966	146	2856
1875	19537	3396	315	58	1052
1876	22278	24028	1421	134	1692
1877	22969	34567	1215	141	1945
1878	27149	103519	5009	98	3358
1879	33801	122722	1087	99	3780
1880	78094	132777	1998	470	5789
1881	56500	139313	7914	464	4856
1882	109988	110366	8775	922	6776
1883	94339	155610	17473	706	7486
1884	88343	237807	42085	262	8657
1885	141147	359659	37286	346	12419
1886	116972	247479	11482	719	8990
1887	109348	209412	20304	802	8020
1888	26633	74015	10777	457	2240
Total	1052676	2038063	168825	6058	84048

YEARLY SHIPMENTS.

YEAR	Cattle	Hogs	Sheep	Horses & Mules	Cars
1871	250	58	.....	6	15
1872	172	168	9	16	13
1873	536	82	138	8	32
1874	157	.....	493	6	14
1875	521	777	.....	2	43
1876	283	35	980	11	26
1877	382	27	.....	30	25
1878	68	174	57	86	20
1879	338	.....	5197	65	65
1880	801	.....	4390	95	75
1881	2391	.....	7766	81	145
1882	6481	541	2220	390	291
1883	9857	1734	513	330	404
1884	8244	546	607	790	388
1885	3211	.....	93	817	183
1886	2558	.....	346	1479	207
1887	2239	239	513	368	121
1888	671	.....	.....	1	27
Total	39160	4381	23322	4581	2094

Total Receipts of Cars for Year 1896.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Total No. Cars
January...	5597	6	3721	313	267	9904
February..	4815	4	2594	370	254	8037
March.....	4853	27	2628	439	175	8122
April.....	4217	10	3480	509	98	8314
May.....	4787	12	3663	423	103	8988
June.....	4624	75	3642	345	49	8735
July.....	5244	119	2371	311	41	8086
August....	6308	123	1858	274	71	8834
September.	8929	128	2178	475	98	11808
October...	8018	92	2833	381	139	11462
November.	6908	109	2592	433	136	10178
December.	6671	125	4012	384	133	11325
Total..	70971	830	35572	4657	1564	113594

Total Shipments of Cars for Year 1896.

MONTH	Cattle	Calves	Hogs	Sheep	Horses & Mules	Total No. Cars
January...	2473	14	240	39	256	3022
February..	2143	12	272	104	231	2762
March.....	2005	42	130	94	151	2422
April.....	1642	11	275	140	93	2161
May.....	2051	13	476	127	87	2754
June.....	1898	18	303	102	48	2369
July.....	2247	16	280	72	45	2660
August....	3249	59	361	85	61	3815
September.	4802	98	260	196	114	5470
October...	3856	93	174	163	137	4423
November.	3424	94	56	124	136	3834
December.	3781	165	121	112	140	4319
Total..	33571	635	2948	1358	1499	40011

Largest Receipts.

LARGEST RECEIPTS IN ONE DAY.

Cattle—October 16, 1894	17,030
Calves—August 31, 1893	1,747
Hogs—July 30, 1890	26,408
Sheep—September 22, 1896	12,114
Horses and Mules—December 17, 1895	797
Cars—December 1, 1896	1,002

LARGEST RECEIPTS IN ONE WEEK.

Cattle—September 30, 1896	81,441
Calves—August 31, 1892	7,022
Hogs—July 31, 1890	155,044
Sheep—May 31, 1890	38,912
Horses and Mules—January 31, 1896	3,667
Cars—July 31, 1890	5,025

LARGEST RECEIPTS IN ONE MONTH.

Cattle—September, 1896	229,945
Calves—August, 1892	19,848
Hogs—July, 1890	347,469
Sheep—April, 1896	113,215
Horses and Mules—January, 1896	11,939
Cars—October, 1895	12,184

LARGEST RECEIPTS IN ONE YEAR.

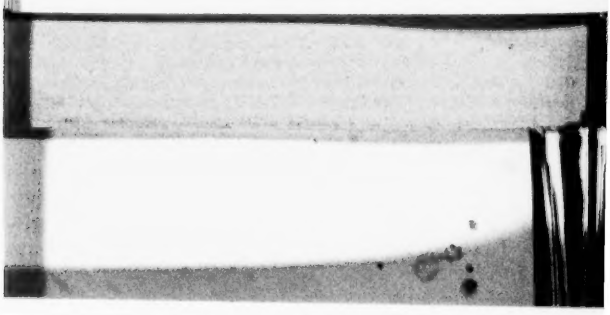
Cattle—1896	1,714,532
Calves—1896	100,166
Hogs—1890	2,865,171
Sheep—1896	993,126
Horses and Mules—1896	57,847
Cars—1896	113,594

Average Weight of Hogs for 1896.

January	238 lbs.
February	231 "
March	232 "
April	226 "
May	222 "
June	221 "
July	214 "
August	216 "
September	226 "
October	229 "
November	238 "
December	232 "

Average weight of Hogs for 1896, 227 lbs.

Average number of head of Stock received per day, 14990.



Total Number of Head and Valuation of Stock Handled at these Yards in Twenty-six Years.

YEAR	No. Head	Valuation
1871	167,199	$ 4,210,605.00
1872	350,160	9,175,071.00
1873	459,681	9,133,399.00
1874	432,146	8,692,337.00
1875	266,077	6,574,473.00
1876	397,539	7,210,033.00
1877	454,882	9,129,047.00
1878	650,617	7,721,999.00
1879	877,836	10,635,231.00
1880	985,883	14,277,215.00
1881	1,392,683	23,595,276.00
1882	1,495,147	32,660,445.00
1883	1,979,706	35,824,499.00
1884	2,522,239	41,145,551.00
1885	3,111,652	39,181,940.00
1886	2,961,302	35,340,150.00
1887	3,332,132	43,514,050.00
1888	3,443,770	55,949,004.00
1889	3,699,588	59,554,276.00
1890	4,986,955	75,503,119.00
1891	4,365,096	66,063,681.00
1892	4,439,405	73,077,168.00
1893	4,299,815	91,779,950.00
1894	4,953,414	98,577,164.00
1895	5,064,669	93,200,329.00
1896	5,471,246	103,402,298.00
TOTAL	62,560,839	1,055,128,310.00

77 In the Circuit Court of the United States in and for the ..... Division of the District of Kansas.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

Norman B. Greer, being first duly sworn, on oath states, that he is the manager and agent, at the Kansas City Stock Yards, for the firm of Greer, Mills & Company, a live stock commission firm doing business thereat. Said firm being composed of Jefferson E. Greer, Frank O. Mills, and Jesse Sherwood. All of the members of said firm being citizens and residents of the state of Illinois.

That heretofore, to wit, on September 10, 1896, at a meeting of the board of directors of The Kansas City Live Stock Exchange, said Greer, Mills & Company were suspended from membership in said exchange, and a notice to that effect posted on the several bulletin boards provided therefor in the exchange building at Kansas City, a copy of which said notice is in words and figures following, to wit:

NOTICE.

At a meeting of the directers of The Kansas City Live Stock Exchange, the following order was made:

That, whereas, on October 7, 1895, the firm of Greer, Mills & Co. members of The Kansas City Live Stock Exchange, were duly found guilty of a violation of Sec. V, Rule IX, of said Exchange, and fines aggregating $1000 were assessed against said firm, as in said rules provided,

And, whereas, the said fines have never been paid as required by the by-laws the said firm of Greer, Mills & Co. be, and they are hereby suspended from membership in The Kansas City Live Stock Exchange until said fines are paid, and the Secretary is hereby instructed to notify the members of the Exchange of this action, and said Greer, Mills & Co. thereof.

It is further ordered that the attention of the members of the Exchange be called to Sec. I, Rule XVI, and that they be requested to govern themselves accordingly,

(Signed) "R. P. WOODBURY, Secretary."

Order of the Board of Directors, September 10, 1896.

[Seal]

That thereafter, and on September 14, 1896, said Greer, Mills & Company served a written notice on the president, secretary and board of directors of said Kansas City
78 Live Stock Exchange, a copy of which is in words and figures following, to wit:

Kansas City Live Stock Exchange Building,
Kansas City, September 14, 1896.

To the President, Secretary and Board of Directors of The Kansas City Live Stock Exchange:

It having been judicially declared by the Kansas Court of Appeals that certain by-laws of The Kansas City Live Stock Exchange are illegal and that every member of the Exchange in continuing such membership is violating a statute that makes it a misdemeanor while such illegal by-laws remain in force.

Notice is hereby given to you that we, the undersigned members of said Exchange, announce it to be our purpose to carry on our business in obedience to the law of the land, and hereby withdraw our consent to Rules IX and XVI, and to any and all other by-laws that are illegal and in restraint of trade, and which may be prohibited by the acts of Congress, or the laws of the State of Kansas or Missouri, which may tend or operate to make said Exchange an illegal combination. We therefore demand that all such illegal rules and by-laws be repealed and annulled, and that you cease all efforts to enforce the same.

We further petition and demand that the order and notice posted on the bulletin boards in the Exchange Building, by order of the board of directors, on the 10th day of September, 1896, in pursuance of said illegal combination, by which you, as the board of directors or managing body of said Exchange, are attempting to enforce said illegal rules and by-laws, be annulled and such publication thereof be withdrawn, the same being injurious to the business of the undersigned, and an unlawful interference with their rights as live stock commission merchants doing business at the Kansas City live stock market.

The undersigned also demand all lawful rights and privileges pertaining to the business of live stock commission merchants at the Kansas City live stock market, at the Kansas City Stock Yards. You are hereby notified and warned to make no unlawful interference with the lawful rights and privileges of the undersigned at said public market.

The notice above referred to, and which you have unlawfully posted and published, and which is hereby requested to be

annulled and withdrawn is an order of suspension and a direction or warning by you to all members of the Exchange, under threat of fines and suspension unless they comply with section 1, of Rule XVI, of the by-laws, rules and regulations of said Exchange, which reads as follows:

"Sec. 1. No member of The Kansas City Live Stock Exchange shall transact any business with any person violating any of the rules or regulations of this Exchange, or an expelled or suspended member, after notice of such violation, suspension or expulsion has been issued by the Secretary or Board of Directors of the Exchange."

GREER, MILLS & CO.

That after the notice was served, the board of directors and officers of said exchange refused and neglected to rescind the order of suspension above mentioned or to annul the posting and publication thereof.

That thereafter, and on the ..... day of September, 1896, Greer, Mills & Company brought an action in the Circuit Court of the United States within and for the Western Division of the Western District of Missouri, in equity, for the purpose of enjoining and restraining the directors of said Kansas City Live Stock Exchange from enforcing the illegal by-laws
79 above mentioned, and from suspending or expelling Greer, Mills & Company from said association. That a temporary restraining order, mandatory in its nature, was issued by the Hon. John F. Philips, sitting as circuit judge in said court, commanding the directors of said exchange to restore the plaintiffs in said action to all rights and privileges in said exchange which had been denied to them by the directors thereof, under the proceedings had on September 10, 1896.

That thereafter, on hearing had before said United States Circuit Court said restraining order was vacated and dissolved on the ground that the plaintiffs in said action could obtain no relief while continuing to be members of said Kansas City Live Stock Exchange, although they had protested and objected to the enforcement of the illegal by-laws and rules thereof. That said restraining order was dissolved on the ..... day of November, 1896.

That from the said September 10th and up to and until said restraining order was issued out of the United States Circuit Court, on the ..... day of September, 1896, members of said Kansas City Live Stock Exchange and the commission men at said Kansas City stock yards refused to trade or deal in any manner with the firm of Greer, Mills & Company. And that during said time Greer, Mills & Company had consigned

to them, for sale as commission merchants, about 60 loads of cattle which they desired to sell at the Kansas City market aforesaid; but which they were unable to do by reason of the commission merchants, at Kansas City aforesaid, refusing to buy the same, and also the refusal of the various packing houses and buyers to buy from them, and this affiant as manager for Greer, Mills & Company, was compelled to ship said cattle away from the yards at Kansas City to St. Louis and Chicago in order to sell the same, and as a result said Greer, Mills & Company made heavy losses to the owners of said cattle in about the sum of $3000. which would have been saved to the owners of said cattle if said Greer, Mills & Company had not been boycotted and prevented from disposing of the same at Kansas City, where the owners expected that the same would be sold, and that by reason of said loss caused by the misconduct and wrongful acts of the members
80 of said exchange, the business of Greer, Mills & Company was greatly injured and their standing among stock men and shippers was greatly affected and impaired. That said cattle were shipped to Greer, Mills & Company, at Kansas City aforesaid, by the owners thereof from Henrietta, Texas, Snyder, Indian Territory, Hymer, Kansas, and other places.

That during the time above mentioned, Greer, Mills & Company were absolutely prohibited and prevented from selling or disposing of any hogs for the reason that the commission men and packers refused to buy the same; and Greer, Mills & Company, in order to prevent severe losses, were compelled to turn said hogs over to other commission merchants for sale, thus losing the commission which they otherwise would have charged and retained for the sale of the same.

That up to the time Greer, Mills & Company were so suspended by the Board of Directors of said exchange, the commission men at said stock yards and the packers bought regularly both cattle and hogs and other live stock from Greer, Mills & Company, almost every day, and affiant and his said firm never had any difficulty in disposing of any and all stock they might have for sale at the market price.

That on or about September 12, 1896, during the time that Greer, Mills & Company were boycotted by the commission men and packers, members of said Exchange, they turned over several car loads of hogs to A. J. Gillespie & Sons, members of said Kansas City Live Stock Exchange, for sale, being unable by reason of said boycott to dispose of the same. That said hogs were consigned to the affiant's firm by stock growers in Kansas and Missouri. That two car loads of said stock were paid for by Greer, Mills & Co. before they were received

at the Kansas City Stock Yards. That upon the sale of said hogs by Gillespie & Sons said Gillespie & Sons were notified by members, directors and the Secretary of said exchange not to turn over the proceeds of said hogs to Greer, Mills & Company, but to remit the same directly to the country shipper, and that in pursuance of said notice said Gillespie & Sons kept the proceeds of said hogs for several days, refusing to turn the same over to affiant's firm, fearing they would be fined, suspended or expelled from membership in said exchange.

That soon after the restraining order of Hon. John F.
81 Philips being served, restraining the members of said Live Stock Exchange as stated, the business of Greer, Mills & Company went on as usual and the boycott was mostly lifted.

That at Kansas City aforesaid there are five large packing establishments, which kill and pack hogs, cattle and sheep, to wit: Dold Packing Co., in Kansas City, Missouri; The Armour Packing Co., in both Kansas City, Kansas and Kansas City, Mo.; The Fowler Packing Co., in Kansas City, Kansas; Swift & Co., in Kansas City, Kansas, and Schwarzschild & Suzberger Co., in Kansas City, Kansas.

That substantially all the hogs that come to the Kansas City market are sold through commission men doing business there, and are bought by said packing companies; and a large number of cattle, being more than one-half of all the fat cattle coming to said market, are bought by said packing houses, and that substantially all the cattle and hogs bought by said packing houses are bought from commission men who handle the same for the raisers and owners thereof and deduct a commission for their services in so doing.

That said packing companies, as companies or corporations, are not members of The Kansas City Live Stock Exchange, but each of said packing houses, companies or corporations have representatives who do belong to and are members of The Kansas City Live Stock Exchange; and that through such representatives who are members of the Kansas City Live Stock Exchange, said Exchange influences, controls and exercises authority and power to prevent said packing companies, corporations and houses from doing business with Greer, Mills & Company.

That said packing houses, companies and corporations although not members of said exchange, as such have during all the periods of time in which said Kansas City Live Stock Exchange was not enjoined by some order of a court of equity, refused to trade with or buy live stock from affiant's firm by

reason of the notice and threats of said Kansas City Live Stock Exchange, although theretofore they had freely and almost daily traded with and bought live stock of the firm of Greer, Mills & Company. That such change in their policy of trading or refusing to trade with Greer, Mills & Company was entirely influenced by The Kansas City Live Stock
82 Exchange, in their attempt to prevent affiant's firm from doing business as live stock commission merchants at the Kansas City Stock Yards.

That on December 1, 1896, Greer, Mills & Company had four car-loads of cattle consigned to them from L. T. Lester from Amarillo, Texas for sale, and that one Josiah Baker, cattle buyer for M. T. Burwell & Co., said Burwell & Co. being members of said exchange, made a bid to the affiant of $2.90 a hundred on all the said cattle except three, and that affiant agreed with said Baker on this price and said Baker agreed to purchase the same, after which said Baker said, "Hold on. I won't close the trade. I am afraid we might get into trouble if we do. We will go up to the office and see the boss and be back right away and let you know." That said Baker came back and stated to the affiant that he could not take the cattle because he was afraid the exchange would fine him or boycott him, and that he could not afford to fight the case in court. He said he was in sympathy with Greer, Mills & Company, and thought it was a damned outrage that this was not a free country, so that anybody could do business that he wants to.

That on the same day, the affiant after considerable effort succeeded in selling said cattle, except five, to a speculator or trader by the name of B. J. Means, but said Means refused to buy the same in his own name, stating that he was afraid he would be boycotted, and had them weighed up to him under a fictitious name, and had them sent to the shipping division instead of to their proper pens, in order to deceive and prevent the members of the Live Stock Exchange from ascertaining the facts as to the purchase. That by reason of said transaction affiant lost to the owner of said cattle about $12.00 for reason that if he had sold the same under contract made with M. T. Burwell & Co., above stated, they would have taken all the cattle except three. In selling to B. J. Means there were five of the cattle which affiant was unable to sell, excepting at a very low price.

That from on or about the 17th day of November, 1896, up to the date of the issuing of the restraining order in this case, by reason of the boycott, aforesaid, Greer, Mills & Company

were compelled to turn over to Noel & Titsworth, com-
83 mission merchants at the stock yards and members of the Kansas City Live Stock Exchange, about 25 car loads of hogs for sale, and from which said sale said Noel & Titsworth deducted and kept full commissions of $6.00 a car, which said commissons were lost to Greer, Mills & Company by reason of the fact that they were by reason of the boycott aforesaid unable to sell the same. And that during said time said Greer, Mills & Company used every endeavor to sell the said hogs to the packing house buyers and others, and spent much time and energy in showing said hogs, and many of the same were priced by the affiant to the packers at the same price for which said packers bought the same from said Noel & Titsworth.

Affiant further states that in the conduct of Greer, Mills & Company's business the cattle and hogs handled by them at the stock yards aforesaid, have been of the same kind and character handled by other commission firms, members of The Kansas City Live Stock Exchange, and not inferior thereto in any respect.

That the action of The Kansas City Live Stock Exchange and its members and the packing houses in refusing to deal with the firm of Greer, Mills & Company has become a matter of great notoriety, and the different attempts which Greer, Mills & Company have made to obtain redress through the courts, have been published and widely circulated in the different papers printed in Kansas City and Missouri and in the state of Kansas, and the fact that Greer, Mills & Company have been boycotted has been widely advertised so that their business has been seriously affected, impaired and injured.

That on November 19, 1896, affiant had for sale, consigned to Greer, Mills & Company, twenty head of heifers about one-half of which belonged to Scott Kennedy a speculator. One George Cole, a buyer for Offut, Elmore & Cooper, members of the Kansas City Live Stock Exchange made a bid to the affiant of $2.30 per hundred for the same, and while negotiating said Cole was called away from the pen in which the heifers were by William Elmore, one of the firm for which he was working and a member of The Kansas City Live Stock Exchange. While Elmore and Cole were consulting, the affiant said, "I will sell you the heifers at $2.30 per hundred."
Cole then came up to the affiant and stated that he
84 didn't know that Greer, Mills & Company had been posted, and that he was not allowed by his firm to trade with them. Thereupon affiant stated to said Cole that one pen of the heifers belonged to Scott Kennedy, and that he

could buy the same of said Kennedy. Thereupon said Cole bought said heifers of the said Scott Kennedy at the same price affiant offered the heifers at.

That on or about the 19th day of October, 1896, the affiant, representing Greer, Mills & Company, sold one bunch of cows to Isaac Thompson, cattle buyer for Swift & Company. In order to induce said Thompson to buy the same, affiant accepted a bid from Thompson for said cows which was below the market price, in order to ascertain whether any packers would deal in any manner with Greer, Mills & Company. That on the next day affiant offered said Thompson a drove of cows which said Thompson desired to buy. He [thereon] stated to affiant that he would not buy to-day. He said, "I got hell yesterday for buying what I did," and stated to affiant that if he, affiant, was trading on his own account he, said Thompson, would buy his cattle quick. That said Isaac Thompson stated to the affiant that he, Thompson, when he bought from affiant the day before, was taken by surprise and forgot about the boycott against Greer, Mills & Company.

That prior to the date that the firm of Greer, Mills & Co. resigned and withdrew from The Kansas City Live Stock Exchange, which withdrawal was posted by The Kansas City Live Stock Exchange on the bulletin boards, on or about the 17th day of November, 1896, they had traded with the live stock commission firm of Theis & Parlin, through speculators who trade through said firm of Theis & Parlin, and prior to such date the said firm of Theis & Parlin had bought from Greer, Mills & Company and sold to them, and their dealings had been quite extensive. That after The Kansas City Live Stock Exchange posted the notice on the bulletin boards referred to in the depositions in this case, the said firm of Theis & Parlin refused to transact any business, either purchase from or sell to the firm of Greer, Mills & Company, and about all transactions ceased from that date. The reason of such refusal and failure to transact business further was on account of said withdrawing from said Live Stock Exchange by the firm of Greer, Mills & Company and the notice posted by The Kansas City Live Stock Exchange.

In conversation with several members of the association known as the "Traders' Exchange" an association that are not members of The Kansas City Live Stock Exchange, affiant was told by such members of the Traders' Exchange that the reason their members refused to trade with Greer, Mills & Company was that they were in sympathy with the Kansas City Live Stock Exchange, and that several members of The Kansas City Live Stock Exchange had said to their exchange,

or to members thereof, that the two exchanges must stand and work together. That some of the principal men of the Kansas City Live Stock Exchange had said to them: "You stand by us in our trouble, and we will stand by you when you have trouble." In the testimony of Mr. A. M. Bryam who is a speculator and trades through Theis & Parlin, live stock commission merchants, he stated that he had no instructions from his house, Theis & Parlin, not to trade or do business with Greer, Mills & Company. Mr. Bryam told J. H. Thompson in the presence of affiant, which affiant heard and here testifies to as a fact, that his Bryam's house, Theis & Parlin, told him they would not receive the checks of Greer, Mills & Company, or would not issue any checks payable to them for cattle.

Affiant further says, that individually he has a membership in The Kansas City Live Stock Exchange, which belongs to him personally. That in all his transactions as manager of the firm of Greer, Mills & Company he is not trading and has not traded because of his individual membership, but has acted solely as the representative of Greer, Mills & Company, and not on account of any individual membership of his own. That affiant says he is not a member of the firm of Greer, Mills & Company, and has no interest in the firm of Greer, Mills & Company, nor in their business, and is only acting as an employee on a salary. That his membership has nothing to do with the business of Greer, Mills & Company. That said Greer, Mills & Company tendered to The Kansas City Live Stock Exchange the three certificates owned by the firm early in November last, and at that time ceased to be members of The Kansas City Live Stock Exchange, and the business they have transacted since, or attempted to transact, has been as
86 independent live stock commission merchants at said Kansas City Live Stock market, independent of The Kansas City Live Stock Exchange. That said firm of Greer, Mills & Company are not carrying on business, or attempting to carry on business, through any membership held by any of their employees, and the firm of Greer, Mills & Company have no connection with The Kansas City Live Stock Exchange since they withdrew therefrom in early November, 1896.

This affiant has never done any business at The Kansas City Live Stock Exchange on his own account since he has been in the employ of the firm of Greer, Mills & Company, and is not now using and has never used his membership certificate in said exchange for the benefit of Greer, Mills & Company or connected with their business. That such membership of affiant's is his individual property, and the firm of Greer, Mills

& Company have no interest therein, and are not using the same in their trade.

That all the other live stock commission merchants, doing business at the Kansas City Live Stock yards and market, at Kansas City, are competitors of the firm of Greer, Mills & Company, and by reason of the action taken by the Kansas City Live Stock Exchange and their enforced boycott upon the firm of Greer, Mills & Company, many of the solicitors of the various houses and commission merchants, who travel through the country soliciting trade, are asserting to the country people who ship live stock to the Kansas City market, that the firm of Greer, Mills & Company cannot sell to the packing houses or commission men, and in that way are trying to influence trade away from Greer, Mills & Company, and are in fact influencing trade away from them, and by reason of such influences and reprsentations, through said solicitors, said competing commission houses have diverted business from Greer, Mills & Company greatly to their damage, and are continuing such representations and continuing to divert business from the firm of Greer, Mills & Company in that manner.

That on or about December 17, 1896, the firm of Greer, Mills & Company received one car of cattle from the country, shipped to said firm for sale at the Kansas City market, and was received by them in the ordinary course of business
87 at said Kansas City market. That one John Shy, an employee of the live stock commission firm of Clay, Robinson & Company who are members of The Kansas City Live Stock Exchange, saw said cattle in the pens and made a bid to affiant for said cattle of $3.60 a hundred, being a price that affiant was willing to sell said cattle for. Some time after said bid had been made and before the transaction of purchase had been completed, said Shy made the remark "Hold on, I want to see. I am afraid we may get into trouble." Then said Shy left the pen where he and affiant were negotiating and went to the office of his firm, or at least he said he was going to the office of his employers and was gone a few minutes and when he came back said to affiant, "we can't take the cattle or pay for them." The man who was going to buy the cattle and who was a customer of Clay, Robinson & Co., was present with Shy, the employee, at the time the dickering was going on, and when Shy came back from his house he said to affiant, "Here is the man who wants to buy these cattle, and for whom we were negotiating the purchase. He was borrowing the money of my firm, Clay, Robinson & Company and we can't let him have the money for that purpose." Upon that statement by Mr. Shy, the countryman who was present and wanted to buy the cattle said to affiant, "I have

the money at home in the bank, and will buy them myself at the price offered" being $3.60 a hundred and did buy them and pay for them.

That the Kansas City Stock Yards Company annually issue a report of the entire business of the stock yards company for the year done previous to the first day of January, and have the same published and printed in pamphlet form, a copy of which is hereto attached and made a part of this affidavit. That the statements, figures and statistics embraced in said report are taken from actual transactions, books and records that are kept by the stock yards company, and are reliable and truthful in so far as the statistics of business done are concerned.

That affiant has received in the due course of business letters and telegrams from stock raisers and customers of Greer, Mills & Company, and that copies of a few of such letters and telegrams are in words and figures following, to wit:

88 (Letter.)

Greenwood, Mo., Sept. 14, 1896.

Greer, Mills & Co.,
Kansas City Stock Yards.

Gentlemen: It is common talk here that you are out of business, having been boycotted by the exchange *trust*. Fearing the power of their boycott I do not think it will be safe for me to consign my hogs to you, so do not think hard of me if I go to other parties.

Hoping that you will be successful in your fight against the *trust*, so I can come back to you with my trade, I am,

Yours respectfully,

J. A. McKITTERICK.

(Letter.)

De Soto, Kans., Sept. 12, 1896.

Greer, Mills & Co.

I see by the papers that your firm have been "suspended" by the association, and not hearing anything from you since I was there Tuesday, I thought I would write and inquire if you are doing any business. The paper stated any firm doing business with you would be in contempt. I thought if you could not do business to any advantage you may send me my balance ($900.00) through State Bank, Eudora, Kansas, immediately and oblige

J. L. MORGAN.

(Letter.)

Cedar Vale, Kan., Sept. 14, 1896.

Greer, Mills & Co.,

Gentlemen: I am thinking of being on the market Monday, the 21st of this month, and seeing by the papers of your trouble, would like for you to write me at once if it will make any difference or interfere with your selling my cattle, also what the market is. Write me so I will get it Friday.

Yours truly,

MAYER & HERSEY.

89 (Letter.)

Syracuse, Kansas, Sept. 13, 1896.

Cattle done fine. Won't take many loads like the last to put me on my feet. Am going to have two loads this week. I am buying some black muley calves, six months, that will weigh 600 fine.

They have got it reported out here that you have lost that suit and were expelled. I hope it is not so. Tell Bob my paper is all right. Yours,

J. H. HAMILTON.

(Telegram.)

Amarillo, Tex., Sept. 15 96.

To Al. Popham,

Care Greer, Mills & Co.

Think boycott affecting house seriously. Better stop shipping. Come here. Must see you. Answer.

WM. HARRELL.

(Telegram.)

Sheridan, Wyo., Sept. 14, 1896.

To Greer, Mills & Co.,

Shippers afraid of Kansas City posting. Does it affect Chicago house? Wire me. Yesterday ship you eleven cars sheep, one cattle. Ans. Parkham.

JOHN D. WALLACE.

(Telegram.)

Hymer, Ks., Sept. 20, 1896.

To Greer, Mills & Co.,

Kansas City Stock Yards.

Is all settled with Exchange? Answer.

AL. POPHAM.

90 (Telegram.)

Canadian, Tex., Sept. 19, 96.

To Greer, Mills & Co.

Is everything all right with the exchange? Answer Hymer.

AL. POPHAM.

90 (Telegram.)

Fort Worth, Tex. Sept. 15, 1896.

To Greer, Mills & Co.

Articles appearing in papers, Greer-Mills posted, require answering. Write me at once what to say.

GEO. BEGGS.

(Letter.)

Farmington, Ks. 12/26, 1896.

Greer, Mills & Co.
Kansas City, Mo.

Dear Sirs: I don't know that I will get down Monday with cattle. Had a call yesterday from a commission man from K. C. who informed me that the packers would not buy from your firm on account of trouble you are having with the exchange. How is this?

Yours respectfully,
D. C. HALL, A. O. H.

(Letter.)

Sheridan, Wyo. Sept. 13, 1896.

Greer, Mills & Co., Chicago.

Gentlemen: Am sorry to say that I lost 9 cars of cattle today on account of Kansas City posting, printed in Sheridan Daily Journal, and presented by A. S. Burrows, cashier of Ft. Nat. Bank, to E. R. Denwoody, Joe Thom and others.

91 I ask them to call on you. They intended shipping to your house, but were scared on account of K. C. posting.

Ship you to-day 11 cars sheep, 1 car cattle.

Ship you 19th Sept. 22 cars cattle.

Send explanation at once in regard K. C. posting. Will it have effect on Chicago house?

Ys. obedient,
JOHN D. WALLACE.

Send ans. by return mail or will lose everything.

That it is the policy of said Kansas City Live Stock Exchange to require every person and firm doing business, or attempting to do business, as live stock commission men, at the Kansas City stock yards, to take out memberships in said exchange, and that on their failure so to do the members of said exchange are notified not to deal with said persons or firms.

That on June 4, 1895, one P. H. Harris, who was engaged as a commission merchant at said stock yards, received a letter from the secretary of said exchange, on the letter-head of said exchange, as follows, to wit:

Kansas City, June 4, 1895.

Mr. P. H. Harris, City.

Dear Sir: I am instructed by the directors of The Kansas City Live Stock Exchange to request that you take out a membership in this Exchange forthwith, or cease to carry any party or parties on commission.

Respectfully yours,

R. P. WOODBURY, Secretary.

(Order of the Board of Directors.)

That the originals of all of said letters are now on file and attached to the affidavit of the affiant made in the action of Greer, Mills & Co. vs. J. R. Stoller et al., pending in the Court of Common Pleas of Wyandotte County, State of Kansas.

That on or about December 22, 1896, said R. P. Woodbury, secretary of said exchange, in giving his testimony produced the records and proceedings of the board of directors of June 3, 1895 and testified as follows:

92 Q. State if in the meeting of June 3rd, there is anything referring to a notice to one Harris, requesting him to take out a membership in the exchange? Produce said notice and permit the notary to take a copy thereof.

A. I find the following: "Mr. P. H. Harris was also invited before the board, and made a statement that he was carrying speculators on commission. It was ordered that he be instructed to take out a membership in this exchange forthwith, or to stop carrying speculators on commission.

Q. Is [that] what you have read a true copy of the records and procedings of the Board of Directors of The Kansas City Live Stock Exchange? A. Yes sir.

Q. Were those proceedings had at a regular meeting of the directors? A. Yes sir.

Q. State, from the minutes which you hold in your hand, what directors were present at that meeting and what the minutes show with reference to them?

A. Messrs. J. N. Payne, C. G. Bridgeford, J. W. Martin, E. J. Ricks, L. A. Lennon, J. E. Cole, and W. S. Hannah.

Q. State whether or not, in obedience to the order of the board, you served any notice on Mr. Harris of the action taken by the directors at that meeting? A. I think so.

Q. Is Mr. Harris a member of The Kansas City Live Stock Exchange? A. Yes sir.

Q. When did he join?

A. His membership was favorably acted on June 27, 1895.

That the above evidence and statements of said R. P. Woodbury [is] now on file in the clerk's office of the Common Pleas Court of Wyandotte County, Kansas, in a deposition taken on

the 16, 17, 18, 21 and 22 days of December, 1896, in the case of Greer, Mills & Co. vs. John R. Stoller et al.

Affiant further says, that the volume of business carried on at the stock yards aforesaid, requires that the telegraph wires should be largely used, and that they are very largely used by commission men and stock raisers and dealers in the
93 carrying on of the business at said stock yards. That the Western Union Telegraph Co. and the Postal Telegraph Co. being the two companies which control all the telegraph wires which can be reached at Kansas City, have offices in the stock exchange building, and have employed a large number of employees and operators therein. That messages are daily sent and received by the commission men, doing business at said stock yards, to and from the various states and territories in the United States. That it is essential that the patrons of the Kansas City market, who raise stock in the states and territories tributary thereto, should be acquainted almost daily with the state of the market in order that they may have knowledge of the same and information when to ship and know the condition of the market.

That Sec. XI, Rule IX, of said exchange, which prohibits any member of said exchange from sending a prepaid telegram, quoting the market or giving information of the same, is a restriction which is detrimental to the business interests of said stock yards, and injurious to the stock growers and raisers, and an attempt to interfere with the giving out of information in regard to the market.

That a large portion of the cattle business is controlled by the commission men doing business at the stock yards aforesaid, by means of advances made by said commission men to the stock growers and raisers in the various states and territories tributary to said Kansas City market. That it is the practice and custom of the larger and many of the smaller cattle dealers, in the western states and territories, to negotiate loans with the commission men at Kansas City, and to secure the same they execute to the commission men their notes, secured by mortgages on the cattle, with the agreement and intention of paying said notes when the cattle are shipped to market and sold. That all the commission men at the stock yards aforesaid advance money secured as aforesaid to the stock raisers, and a large portion of the notes so secured are by the commission men aforesaid discounted in bank and endorsed by said commission men.

That to the knowledge of the affiant mortgages are now so held by commission men, members of said Kansas City Live Stock Exchange, at Kansas City aforesaid, to the amount of

many hundred thousands of dollars. That the profit arising to the commission man in so making advances to the
94 stock raisers consists in the commission derived from the sale of the cattle when shipped to the market, and a profit made on the discount of the paper. That at the Kansas City market the notes known as "cattle paper" draw generally ten per cent. interest, and this paper is discounted at the various banks at from five and one-half to eight per cent. interest after being endorsed by the commission man. That in the opinion of the affiant one-half of the cattle shipped to and sold at the Kansas City market is incumbered by the method aforesaid. That when such money is so loaned by the commission man to the stock raiser, it is the custom to take an agreement to the effect that when the cattle are ready for market the owner will ship the same to the commission man advancing the money and allow a commission for the sale and handling of the same.

That a large number of cattle, known as stockers and feeders, are bought by commission men at the Kansas City Stock Yards aforesaid, for stock raisers and feeders in the various states and territories, and a mortgage taken for the purchase price by the commission man before said stock is shipped out. That the stock is then taken by the stock grower to the range where he desires to feed the same, and when ready for market is reshipped back and sold by the commission man at Kansas City. That at the Kansas City market aforesaid stock is so bought for feeders in a large portion of the western states and territories tributary to the Kansas City market.

That the pens and yards at said Kansas City market are owned by the Kansas City Stock Yards Company, a corporation in nowise connected with the voluntary association known as The Kansas City Live Stock Exchange, except that said stock yards company owns the building in which all of the commission men have offices, said commission men being tenants of said stock yards company. That the pens and yards of said stock yards company are situated on both sides of the state line between Kansas and Missouri, and the state line runs through the center of said building, dividing it about in the middle and that the pens in which said stock is kept are about equally divided between Kansas and Missouri. That sales and purchases are made by the commission men at said stock yards on both sides of the line about as many sales being made in Missouri as there are in Kansas.

95 That stock shipped in from the west is nearly all unloaded in the state of Kansas, at chutes and platforms provided by the railway companies, and that a part of the stock received at said stock yards is unloaded in the State

of Missouri. That when loaded and shipped out it is so done both in Kansas and Missouri, part of the terminals at said stock yards being in one state and part in the other. That a large proportion of the cattle sold in Kansas is driven over and weighed in Missouri.

That outside of the market at Chicago, Illinois, the Kansas City market aforesaid is the largest market for live stock in the United States, and a great many states and territories are tributary thereto.

In shipping cattle from the country to the Kansas City market it is customary to arrange for what is called through billing with the railroads. That is, if a man ships cattle from Texas to Kansas City he may want to test the market there, and have the right if the market is not satisfactory, to continue the shipment on as far as Chicago or St. Louis. To do this they arrange for through billing from Kansas City to Chicago or St. Louis, as the case may be, at a through rate.

The area of country for which Kansas City is the natural market for live stock is very large and embraces Kansas, Missouri, Arkansas, Indian Territory, Oklahoma, Texas, New Mexico, California, Colorado, Utah, Wyoming, Montana, both Dakotas, Nebraska and Iowa, and I think cattle come from some other states also.

The loans that are made by commission men on cattle are made in all this territory. In shipping cattle to the Kansas City market the shipments are made almost invariably to some commission house or firm, who look after the arrival, unloading and care of the cattle after they arrive. If by any boycott or interference with the commission house or firm at the Kansas City market they are prevented from selling the cattle to the customary buyers it entails a delay, and loss in various ways. If they have to be reshipped to some other market the delay and travel causing shrinkage, a possible change in the market price and additional expense. The fact that so many cattle are sold here for packing or slaughter and for export trade shows that the market is favorable to the stock raiser and shipper. The necessity of shipping out again after
96 arrival at the Kansas City market is always a hazardous one for the reasons given.

When a stock commission man or firm tries to do business as a commission merchant at this market without being a member of the Exchange or having been a member and expelled or withdraw, the combined influence of all the members of the

Exchange is used to put obstacles in the way of his doing any business and preventing the sale by such commission man or firm of any cattle or hogs at this market. The method of doing that is by posting a notice on the bulletin board or the several boards in the Live Stock Exchange building, which under rule 16 is understood to mean a direction to all the members to not transact any business with the member so posted under the heavy penalties and forfeitures prescribed in the rules and in addition to that, they use the moral influence of the entire combination to prevent them from getting live stock from the country, and in getting the packing houses to refuse to purchase cattle or hogs from such commission man or firm. This method has been effected by the combined influence used by reason of the large numbers belonging to the Exchange in carrying out what they understand the rules have obliged them to do. Affiant knows that the firm of Greer, Mills & Co. could not sell to the packers after they were suspended while they were members of the Exchange except at periods when restraining orders from the courts prevented the Exchange from carrying out the rules referred to, and when such restraining orders were in force, the packers bought freely of them the same as other commission men; that after the firm of Greer, Mills & Co. withdrew from the Exchange, the same influence was brought to bear on the packers, and the packers refused to buy until that firm obtained a restraining order from the Common Pleas Court of Wyandotte County, which at this date is still in force, and they are now doing business, and the packing houses are buying from them because of such restraining order; that if such restraining order was vacated by the court, the influence of the members of the Exchange would again prevent the packing houses from purchasing live stock from affiant's firm. There is no other cause or reason that has made it possible for the firm of Greer, Mills &
Co. to do business and sell live stock at the Kansas City
97 market at one period of time and not in another, except
by the influence exerted by the Kansas City Live Stock Exchange and its members.

Among the influences that bring trade to the Kansas City market is the fact that commission men at Kansas City loan to stock growers and feeders large sums of money throughout the states and territories named to prepare their cattle for market, and it is the custom and usual contract that such live stock for which such loans are made to ship them to the commission men making such loans for sale at this market, and that the Kansas City Stock Yards is the only available public market for the purchase and sale of such cattle for the large territory named.

That the stock yards and pens and the tracks leading thereto are situated on both sides of the state line of Kansas and Missouri in Kansas City, and it is daily custom and the practice of the defendant commission men and firms to make deliveries of stock that is sold in the State of Kansas on the Kansas side of the State line to purchasers in the State of Missouri, and to make deliveries of stock sold in Missouri to purchasers in the State of Kansas. All the scales for weighing hogs are located on the Kansas side of the State line; also all the hog pens are located on the Kansas side; the scales for the weighing of cattle are located in both states of Missouri and Kansas; about 25 per cent. of the area of the yards are located in Missouri, and the other three-fourths are located in Kansas. The transactions of the purchase and sale, the weighing and delivery and the steps necessary to take to close a transaction of purchase and sale in most cases are partly in one state and partly in the other.

It is the custom and practice among a large number of cattle growers and shippers residing in the various states and territories, including Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, Arkansas and the territories of Oklahoma, Arizona and New Mexico to consign cattle to commission men at the Kansas City Stock Yards, members of said association and the defendants herein, for sale, and to [—] drafts for various amounts on said commission merchants to whom the
98 same are consigned, and to attach the bills of lading issued by the railroad or carrier thereof for such interstate transit, and to draw money on the same from the local banks in such state or territory from which the original shipment is made which drafts are presented to the consignee, the commission men at Kansas City, and paid by such commission men in both states of Missouri and Kansas, the proceeds of which drafts are remitted by the collecting bank in Kansas City to the banks located in the various towns and cities in the western states where the said shipments originate. The transaction of the shipment and sale originates in one state and is consum-ated in another in most all cases, or the majority of cases, and [—] is often difficult to determine what transaction or transactions connected with the business in the handling of the cattle at the stock yards was consum-ated in the State of Missouri or begun in the State of Missouri, and what part was begun and consummated in the State of Kansas.

Affiant further states that each of the defendants have signed and personally agreed to abide and to be governed by the rules and regulations of the said Kansas City Live Stock Exchange, which are printed in a book for that purpose, and

appended to such book is a roll of membership subscribed by each member, by which the same is a written contract among all the members combined and associated together to jointly carry out and enforce each and every of such rules and by-laws and articles of association; that a true copy of such articles of association, rules and by-laws so signed and agreed to in writing by each of said members is hereto attached, marked exhibit "A" and made a part of this affidavit, and here referred to as fully as if set out here. That there is nearly 300 members of said Kansas City Live Stock Exchange; that by reason of their great numbers they are enabled to control an influence almost the entire trade in the purchase and sale of live stock at the Kansas City market to enforce rules 9, 15, 16 and other rules that tend to prevent free competition in the services charged for selling live stock the distribution of information to country patrons of the state of the market and the number of employees or solicitors employed by each commission man or firm for the handling of their business and to prevent a commission merchant not a member of the Exchange from transacting the business of a live stock commission merchant
99 at this market.

NORMAN B. GREER.

Subscribed in my presence and sworn to before me this 18th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28, 1898.

100 In the Circuit Court of the United States in and for the Division of the District of Kansas.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

A. J. Gillespie, being duly sworn, on oath states, I reside in Kansas City, Missouri, and am engaged in the live stock commission business at the stock yards in Kansas City. I am one of the firm of A. J. Gillespie & Sons, composed of A. J., T. E., L. J. and J. F. Gillespie. That said firm are members of The Kansas City Live Stock Exchange and have been for ten years last past. That when a person desires to do a commission business at said Kansas City Stock Yards, he has to buy a membership and subscribe to the rules of said exchange. That there are in the neighborhood of three hundred members in said exchange. That all of the firms doing business as com-

mission merchants are members of said Kansas City Live Stock Exchange, except Greer, Mills & Co.

I saw a notice posted on the bulletin board of said exchange, about November 17, 1896, notifying members that Greer, Mills & Co. had withdrawn from the exchange, and giving notice that the members of the exchange must govern themselves accordingly. Our firm was also served with a copy of said notice. There was also a copy left at our office. After this notice was served, it was my understanding that I
101 or our firm could not do business with Greer, Mills & Company without being liable to the penalty of a fine, or suspension from the exchange.

Before that time our firm had been trading a good deal with Greer, Mills & Company, buying and selling stock, hogs and cattle, I think mostly cattle. We bought a good many cattle of them in the last two months before the notice was posted. Since the notice was served upon us, we have done no trading with them, either buying from or selling to them. Our relations with Greer, Mills & Company have always been pleasant and our dealings with them satisfactory, and the only reason we cannot trade with them is because of the notice served on us by the secretary of the exchange. Under the custom and practice of the exchange as provided in the rules and regulations, as I understand them, we would be liable to a fine of $500 for every offense if we traded with Greer, Mills & Company, and in case of two or more violations we might be expelled from the exchange.

This notice served on us virtually shuts Greer, Mills & Co. out of the market so far as we are concerned, as we cannot afford to do business with them. If they were shut out of the market their losses would be very heavy, and the losses would be in proportion to the amount of stock they received for sale.

I have talked with several members of the exchange since the notice aforesaid, and they have stated that they did not trade with Greer, Mills & Company. It is a fact notorious and well known among members of the exchange and notorious among parties trading here on this live stock market, that Greer, Mills & Company are being boycotted in their trade by all, or nearly all, of the members of the exchange.

102 In what I have said about the boycott it applies to such time as no restraining order from the courts [were] in force against the Exchange [prohibited] the members of the Exchange from interfering with the business of Greer, Mills & Co. At this time they are now doing business and we are trading with them because of a restraining order from the Court of Common Pleas of Wyandotte County, Kansas issued

against the Exchange and its members preventing them from refusing to trade or do business with that firm by reason of the combination or association, and preventing the Exchange from enforcing rule 9 against them.

The packing houses or corporations that slaughter cattle and hogs at this market, purchase a large per cent of the cattle that are shipped to this market and nearly all the hogs. I think that 80 or 90 per cent of all the fat cattle that are shipped to this market are purchased by the packing houses. The packing houses are nearly all incorporated and their relation to the Exchange is through certain members interested in or employees of the packing companies being members of the Exchange. The packing companies or corporations as such are not members of the Exchange, but they are in touch with the Kansas City Live Stock Exchange through one or more members or representatives of such corporations being members of said Exchange. For instance, the Armour Packing Company have as members of the Exchange, K. B. Armour, S. B. Armour, and their head hog buyer, A. E. Beggs. The Swift Packing Company have as members of the Exchange E. F. Swift, and their head hog buyer, E. J. Rickes. Jacob Dold & Sons Packing Company have as members of the Exchange, J. C. Dold, and their head hog buyer named Sparrow. The Fowler Packing Company have as members of the Exchange, G. A. Fowler, and their head hog buyer, J. W. Martin. The firm or company of Schwartzchild, Sulzberger & Co. are represented by some one whose name I do not now remember. Of the Armour Packing Company A. E.

Beggs, their head hog buyer, is one of the Board of Di-
103 rectors of the Kansas City Live Stock Exchange. Of

Swift & Co. corporation, E. J. Rickes, head hog buyer, is a member of the Board of Directors of the Kansas City Live Stock Exchange. Of the Fowler Packing Company, J. W. Martin was a director up to the election this month, February 1897. The influence of the Kansas City Live Stock Exchange on all the different packing companies is such that if the Exchange have posted any one on the bulletin board as a party or firm that the members of the Exchange should not do business with under rule 16 the packing companies usually refuse to trade with such posted firm or commission man and it has the effect of preventing such posted commission merchant or firm from selling live stock shipped to the member or firm to the packing houses or companies. Our firm has always acted on the understanding of the rules, and the directions of the Exchange, through its board of directors, that when a commission house or firm was posted on the bulletin board by order of the Board of Directors of the Exchange under rule 16, that it was a direction to quit trading or doing busi-

ness with such posted member or firm, and affiant's firm has always acted accordingly. The packing houses, by reason of the large amount of live stock sold at the Kansas City market being handled by commission merchants who are members of the Exchange are largely influenced by the wishes of the Exchange and by the actions and orders of the Board of Directors. The practical effect of it is to prevent a commission firm or house from handling and selling his stuff at this market to the packing companies or others where the Exchange tries to prevent it. This concerted action is brought about through the combination made by the articles of association and rules and by-laws. If it was not for the association having the rules and by-laws now in force, any one could establish themselves as a live stock commission merchant and sell live stock for such commissions and charges as they saw fit, and make free competition as to the price charged with others and
104 with their customers from the country.

The object and effect of rule 9 is to maintain a fixed commission charge of not less than the rate named in the rule and prevent free competition among members or dealers at this market in the charges made for the purchase and sale of live stock. The object and effect of section 11 of rule 9 is to prevent the free distribution of information concerning the state of the market to stock growers and shippers in the country, and the purpose and effect of section 10 of rule 9 is to limit the number of employees each commission merchant or firm shall employ to solicit trade either in the yards or in the country. In the respects of commission charges for selling, the number of employees and the sending of information by telegraph, free competition is practically prohibited by rule 9 mentioned. And to make rule 9 effective, rule 16 practically makes a boycott or prohibition upon any one so trading at this market who refuses to be governed by rule 9. It has been the policy of the Exchange to use its influence as far as possible to compel everyone who does a live stock commission business at the Kansas City Yards to become members of the Exchange so as to make them subject to the rules, and their numbers and influence is so great they have been able so far to bring about the membership in the Exchange of all persons so trading or to practically prevent their doing a business as live stock commission merchants. While no force is used, the large numbers in the combination and the influence brought to bear by various methods has been effective.

The states tributary to the Kansas City market and that ship cattle to this market are Missouri, Arkansas, Texas, Kansas, Nebraska, Iowa, Wyoming, the two Dakotas, Montana,

Utah, Colorado, and the territories of New Mexico, Arizona, Oklahoma and Indian Territory. I think there are some others. I believe it is claimed by the stock yards Co. that live stock comes to this market from some twenty-four dif-
105 ferent states and territories. It has become a very large and a very important market for the meat product, and is the natural market for the stock growers and feeders in a very large section of country.

One of the influences that has built up this large market is the fact that millions of dollars are loaned by commission merchants doing business at the Kansas City Yards to the raisers of cattle, growers and feeders throughout that area of country to enable them to prepare the [anumals] for market. The commission man loans to some customer or party in the country on the cattle that he has at his farm or ranch for the purpose of feeding and fattening and carrying his cattle until they are ready for market. It is the custom and practice where such loans are made that the cattle on which the loan is made shall be shipped to this market and handled by the commission man making the loan. This is the commission man's plan for collecting his money and the commission charge for the sale of the cattle at this market is one of the inducements for making the loan. If the commission man was unable to sell the live stock at this market when they arrived at the yards, it would jeopardize his loan, and make an additional expense and possible loss in market price to be compelled to reship them or to sell them on some other market. The only other market that he could sell them on would be Chicago or St. Louis, and there they would have to be handled by other commission men, resulting in loss of commission, the loss by shrinkage, the loss by extra freight, if not originally billed to such other market, and possible changes in the market price.

It is customary and the usual practice that when a shipment is made by a stock grower or feeder to this market from the place where the cattle have been prepared for market, as for instance in Colorado, Oklahoma or Texas, to make a draft at the local bank where the cattle are loaded on the cars for shipment, such draft being drawn by the man making the shipment on the commission merchant at Kansas City and depositing the same in the local bank where the ship-
106 ment originates and drawing money on the same, the draft being attached to the bill of lading and by the local bank sent to some bank in Kansas City for collection. This draft is then paid by the commission merchant who by such process has advanced money on the cattle so shipped by the time the cattle arrive at the Kansas City market. This money so advanced is repaid out of the sale of the live stock

at the Kansas City market. If such sale is interfered with or prevented by any boycott or any influence brought to bear through the Kansas City Live Stock Exchange, it hinders the consummation of the transaction in accordance with the agreement of the parties and interferes with the commerce of the product to that extent. It would be a hindrance and embargo upon it, if by any combination of men a sale was prevented at the Kansas City market.

In some instances, if the stock grower or party in the country desiring to ship cattle wishes to get the benefit of through rates to Chicago or St. Louis, and may want to sell on such markets, but desires to first offer his cattle for sale on the Kansas City market, he bills them through to Chicago or St. Louis with the privilege of unloading at Kansas City and offering them at that market and even selling them there, and if they are finally shipped to the point of original billing, they can go on in the same name or any other name through to the market to which they were originally billed at the same rate. This, I understand, is done and permitted as interstate traffic with the railroads under the Interstate Commerce Laws.

The Government of the United States has established at this market a bureau of inspection under two divisions, one of which is to prevent the exportation or transportation from one state to another of diseased cattle to prevent the spread of disease among native or domestic animals—the other department being for the examination of meats to test their quality as a food product. These superintendents or agencies are appointed under the United States Department of Agri-
107 culture. Mr. Albert Dean being the Government agent at this market of the Bureau of Animal Industry whoduties relate to the quarantine of cattle and their inspection for transportation, and Dr. C. J. Sihler, Superintendent of meat inspection, having in charge the inspection of animals slaughtered for food product. The business done in live stock at this market being so far interstate in its nature that the department of agriculture has appointed the agents named for supervision for both the purposes named.

The stock yards pens, tracks, buildings, and all the facilities for the receiving, handling, feeding, watering, and shipment of live stock whether cattle or hogs are located at the State Line, between the states of Kansas and Missouri, about one quarter of the pens or yards being on the Missouri side and about three-fourths on the Kansas side. The office building in which the Kansas City Stock Yards Co. have their offices and the Kansas City Live Stock Exchange and the offices of

their members are situated on the line, the state line running through the building. In the transaction of the business of the purchase and sale of either hogs or cattle, a part of the business is transacted in one state and a part in the other state before the transaction is consummated. A sale of hogs that is made in Missouri the weighing is done in Kansas, on the Kansas side of the line where all the hog scales are located. The scales for weighing cattle are on both sides of the line. When a car or train of cattle come into the yards from the country they are unloaded and put in pens, the cattle pens being on both sides of the state line. After they are located in the pens the commission merchant goes to the pens with his customer who desires to purchase and shows the cattle; the same may be said of hogs. The customer is asked to make a bid on the cattle or hogs, as the case may be, and if they are such as he desires to purchase, and the bid is satisfactory to the commission merchant, the sale is made verbally;
108 then, the stock purchased has to go to the scales for weighing. At the weighing scales when the live stock is weighed the weigh-master fills out what is called a scale ticket, for which printed blanks are furnished, on which ticket the name of the owner, the name of the seller, the name of the buyer, the date of sale, and the weight are placed. This scale ticket is used as a slip to go to the banks, and as the evidence of the closing of the transaction for which the money is paid. The purchaser, whether a packing company or others, placing their name on the back of the ticket. When it goes to the bank in that shape it is used as money. In the different steps taken from the commencement of negotiations for sale until the sale is closed, some parts of the transactions are performed in the State of Kansas and some parts in the State of Missouri in many of the sales.

All the members of the Kansas City Live Stock Exchange are required to and do subscribe their names in a book called the membership roll that has preceding the names the articles of association, by-laws and rules. By signing their names they agree to live up to and abide by all the rules and regulations of the Exchange. That is the way they have associated themselves together as a combination to carry out and enforce the provisions of the association and its rules and by-laws. Under the custom and practice that has grown up since the organization of the Kansas City Live Stock Exchange it would be very difficult for any commission man, house or firm to carry on a live stock commission business successfully without becoming a member of the Exchange. The methods for preventing that and the hindrances put about a person so trying to do business would be very embarrassing and effective in preventing such business, unless such person was pro-

tected by the courts in restraining interference with his business.

While the owner of cattle and hogs, theoretically, can bring them to this market and sell them himself without the aid of a commission man, the methods to be gone through make it very difficult for such owner to get his cattle into and
109 out of the yards and complete the sale of same. In other words, there is too much red tape for him to get through with, so that the practice is for all shippers from the country to obtain the services of commission men to make their sales for them. While there is no rule directly forbidding commission merchants from buying and selling in the yards without becoming members of the Exchange, yet the rules are so worded and the custom and practice of the Exchange has been such as in effect to prevent them from doing business without becoming members of the Exchange, and that is the way it is understood by nearly every one trading here. The intent and purpose of the rules as they are adopted and promulgated indirectly accomplish the same purpose and are so understood in practice.

A. J. GILLISPIE.

Subscribed in my presence and sworn to before me this 18th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28th, 1898.

110 In the Circuit Court of the United States in and for the Division of the District of Kansas.

The United States, Complainant,
vs.
Henry Hopkins et al. Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

Wm. Winder first being duly sworn on oath deposes and says: That he is a member of the Kansas City Live Stock Exchange and holds a certificate of membership therein; that he has been a member of the Exchange for at least five years; that he has spent most of that time in and about the yards and part of the time in the Live Stock commission business for himself and part of the time in the employment of others as cattle buyer; affiant knows the methods of doing business [by] the Kansas City stock yards in the sale and purchase of live stock and the general source from which all the cattle come to the market, and how they are handled and

sold after they arrive here. Affiant is also acquainted with the articles of association, rules and by-laws of the Kansas City Live Stock Exchange, and the methods of doing business by the Exchange. With the exception of Greer, Mills & Co. all the commission merchants doing business at this market of buying and selling live stock on commission are members of the Kansas City Live Stock Exchange. Nearly all of the live stock, both cattle and hogs, that are shipped to this market are consigned to members of the Kansas City
111 Live Stock Exchange by the owner or shipper sending the same to this market for sale, and are handled here at the market by such commission merchants.

From my experience as a member of the Exchange doing business here at the Kansas City stock yards, and from my observation and knowledge of the methods used by the Kansas City Live Stock Exchange, and their rules and by-laws, I know it is the purpose of the exchange to prevent any one from doing business as live stock commission merchants at this market unless they belong to the exchange. They use their rules and by-laws as far as they can to effect their purpose, and supplement the rules by other methods to influence parties to join the Exchange and to force membership on all parties acting as commission merchants. The strong influence of the large numbers has its effect by reason of the large number belonging to the Exchange all working for the same purpose of preventing any outsider from doing business exerts a great influence on timid parties or parties not able to stand their ground as independent merchants. It is not intended that there shall be any competition in the rate of commission charged for handling cattle and hogs and sheep. With the business as it has grown up and is now carried on under the control of the Kansas City Live Stock Exchange with their present rules and by-laws and their large membership, it would be next to impossible for any independent or competitive commission firm or commission merchant to do business here and maintain themselves at all without they were aided by injunctions or restraining orders from the court. They are practically boycotted in their trade, and one of the methods for doing this is through the live stock commission men belonging to the exchange whose solicitors travel through the country and meet and talk with the parties who would otherwise ship the commission merchant trying to do an independent business outside of the Exchange and tell them that such and such parties are not members of the Exchange and are being boycotted and they can not sell
112 the stock of the party in the country having it to ship. They exert an influence in this way and other ways that makes it difficult for an independent member to do business

or get any business. They have a power of numbers that exerting their influence in various ways makes their boycott effective.

One of the methods of bringing about such a boycott or preventing members of the Exchange or anyone under the influence of the Exchange from trading is done through rule 16. The Board of Directors of the Exchange pass an order that the party that they direct their antagonism against shall be posted on the bulletin board, and this order is carried out by the secretary posting the bulletins on the several boards of the Exchange building the name of the party, and that such a party, if a member of the Exchange, has been fined or suspended or expelled, as the case may be, or that such party is not a member of the Exchange, and for the members to govern themselves accordingly.

This is taken to mean by the members of the Exchange that they are not to transact any business with any such party so posted, and they carry out the order by refusing to trade and by influencing as far as they can others that are not members of the Exchange.

WM. WINDER.

Subscribed in my presence and sworn to before me this 18th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

Commission expires March 28th, 1898.

113 In the Circuit Court of the United States in and for the Division of the District of Kansas.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

R. T. Bass, being first duly sworn, on oath deposes and says: I am a member of the Kansas City Live Stock Exchange and have been a member of same for five or six years. I am now the head hog salesman for the firm of Greer, Mills & Co., live stock commission merchants at the Kansas City stock yards, and have been selling for that firm a little over eleven months. The bulk of the hogs that are brought to this market are sold to the local packing houses here for slaughter or shipment by the packing company. During my entire business of selling hogs the bulk are sold to these packing houses and the remainder to shippers and speculators. During the period of

time that Greer, Mills & Co. were not having trouble with the Kansas City Live Stock Exchange I had no trouble in selling hogs for them to the various packing houses and to shippers and speculators when we had the kind and quality each purchaser wanted. During such periods of time as Greer, Mills & Co. were suspended for non-payment of a fine, and during the period of time since they withdrew their membership from the exchange and ceased to be members of the Kansas City Live Stock Exchange, as a general rule the packing houses and the speculators refused to purchase from me as the representative of Greer, Mills & Co. During the period of time that restraining orders from the courts were in force the most of them did purchase from me and are purchasing from me now. In
114 some cases since the trouble began and even now some of the buyers for some af the packing houses are indifferent, and it is with difficulty I can make sales to them. I am satisfied that all this difficulty in making sales or in getting the packers and speculators to purchase hogs from me as the representative of Greer, Mills & Co. grows out of the trouble Greer, Mills & Co. have had with the Kansas City Live Stock Exchange. The trouble began when Greer, Mills & Co. were fined for an alleged violation of rule 9 and the order suspending them until the fine was paid, and later on, by their withdrawing from the exchange and surrendering their certificates of membership. The class of hogs handled by Greer, Mills & Co. which I have had for sale for them were such as were readily salable on the market, and any refusal to purchase the same was because of the trouble with the exchange. Some few still refuse to purchase on account of the trouble mentioned.

R. T. BASS.

Subscribed in my presence and sworn to before me this 18th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28th, 1898.

Indorsed: No. 7402. Affidavits. Filed Feby. 23, 1897. Geo. F. Sharitt, Clerk.

115 In the Circuit Court of the United States, District of Kansas, First Division.

ORDER.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

In the above cause it is ordered that the complainant have until Wednesday, March 3rd, 1897, to file affidavits or depo-

sitions in support of the motion for temporary injunction, and the defendants to have until Tuesday, March 9th to file affidavits in opposition to said motion and complainant to have until and including March 13th to file rebutting affidavits. Evidence to be closed by affidavits or depositions March 13th, '97, and the application for temporary injunction is set for March 15th, 1897 at 11 o'clock a. m.

CASSIUS G. FOSTER, Judge.

Indorsed: No. 7402. Order. Filed Feb. 23, 1897. Geo. F. Sharitt, Clerk.

116 In the Circuit Court of the United States for the District of Kansas, First Division.

United States of America
In Equity. vs.
Henry Hopkins et al., members of the Kansas City Live Stock Exchange.

THE ANSWER OF THE DEFENDANTS TO THE BILL OF COMPLAINT HEREIN.

The defendants in the above entitled cause, saving and reserving unto themselves all manner and form of objection and exception to the manifold and manifest insufficiencies of the bil of complaint herein, for answer thereto, or to so much thereof as they are advised that it is necessary for them to thus answer, do allege and state:

1. It has long since been, and is now, the uniform custom and practice, whenever a given city or point is inclined to become a trade center or market for given property or commodities, that the formation of an exchange or board of trade is both proper and necessary in order to further the tendency to make such trade center, to build up the same and to maintain it when once established. By the common practice of mankind and in response to demands of business interests, such exchanges or boards of trade are established and maintained by the persons engaged in the branch of business under consideration, or interested in the development thereof. In some instances the organizations are formed by persons engaged in buying and selling a given product or commodity as principals, but in most of the instances such bodies are organized and maintained by parties who sell and buy a given product or commodity for others upon a commission, and known either as brokers or commission merchants. Such organizations exist in practically every city of importance in the United States, and are devoted respectively to bonds and stocks, grain, cotton and other agricultural products, live stock, petroleum

and other mineral products, and generally to all kinds and species of property which are bought and sold by per-
117 sons acting for a commission or brokerage. All of these organizations are framed upon the same model, and the provisions of their several charters, constitutions, rules and by-laws all embody these features: membership is wholly at the will of the associates, and is granted subject to the conditions prescribed by the rules of the body in question, and continues only so long as those conditions are complied with; the privileges of membership are available only to members, and all others are excluded from such privileges and from the right to deal with such members; members are subject to discipline for dishonorable conduct, failure to keep their business engagements and for other similar acts on their part; a schedule or tariff of the rates of commission or brokerage fees to be charged by the members in their dealings is prescribed, and all evasions thereof prohibited; actions or proceedings which the course of trade has demonstrated to have a tendency to cause stealthy and unfair or ruinous warfare between members are provided against; members are prohibited from dealing with persons violating the rules of the body or who have been suspended or expelled therefrom; and generally such provisions are made which, in the opinion of the business associates, based upon and sanctioned by the experience of the commercial world, do and will have the effect to inspire public confidence in the dealings of the associates, in the machinery provided for punishing dishonorable actions and for enforcing compliance with business engagements; well-known and reasonable rates of compensation to be charged by the members are prescribed and in order that competition between the members may be fair and honorable, and that the same treatment may be accorded to all employers, that evasions of such rules shall be punished. Such organizations do not engage in business, but exist simply in order to prescribe rules and provide facilities for the transaction of business by the members thereof, and to govern them by such rules and regulations as have been evolved and sanctioned by the developments of commerce and which are universally recognized to be just and fair to all concerned. Each member of said organization is left, and is in fact, free to compete, in every manner and
118 by all means recognized to be fair and just, for his share of a business which comes to the point at which the members of the organization do business. After similar live stock exchanges had been formed at Chicago and East St. Louis, Illinois, and the great benefits to the public and to the persons interested in that business at said cities had been developed, the commission merchants engaged in selling and buying live stock at Kansas City, in 1886, formed the Kansas City

Live Stock Exchange, following, in their rules, regulations and schedule of commissions, in all substantial respects, the provisions which had been made upon the same subjects respectively by the exchanges theretofore established at Chicago and East St. Louis, Illinois, as aforesaid; and that since the establishment of said live stock exchange at Kansas City, similar exchanges have been established at St. Louis, Mo., Omaha, Indianapolis, Buffalo, Sioux City and Fort Worth, and that at several points provisions of the same general nature have been made the subject of an agreement between the parties engaged in the business of selling live stock for commission without the formal organization of an exchange. The defendants herein either participated in the organization of said exchange, or have since become members thereof, and have agreed, one with the other, to faithfully observe the articles of association, rules and by-laws thereof, which provisions in full are as follows:

* * * * * * * * *

167 The officers provided by said agreement have been elected and charged with the duty of enforcing said rules, but it is not true that said Exchange is engaged in any business at any point whatsoever, such business being done by the members thereof, each on his own account and to his own profit, or at his own loss, as the case may be. The business of said members is principally done at the Kansas City stock yards. Most of said members are engaged in selling, and sometimes in purchasing, live stock for a commission, and acting for others. There are also a number of members who are engaged in managing and operating packing houses and other enterprises deeply concerned in building up and maintaining the high standing of Kansas City as a point to which live stock may be shipped for sale or at which live stock may be bought under rules and regulations insuring honesty and fidelity, and under uniform and reasonable rules and at uniform and reasonable rates of commission, and that such facilities shall be maintained for conducting the sale and purchase of live stock, that persons desiring to sell or buy the same will find it to their interest to do so. Accordingly, the persons last described, and others interested, are also members of such Exchange, and each and every member thereof voluntarily either joined in originally establishing the same, or has since become a member thereof, and that at no time has said Exchange refused to admit as such member any reputable person who was willing to comply with the conditions of membership and to abide by the rules of said organization. It is true that by reason of the high standing of the

members of the Exchange individually, the guaranties afforded by the rules to which they have subscribed, the merit of the regulations for doing business which they have established, the reasonableness of the rates of commission which are charged, and the assurance that said rules will be promptly and efficiently enforced, and the usefulness and benefits of the facilities which have been provided, induce the greater part of the live stock which is shipped to Kansas City stock yards to be consigned to some commission merchant who is a member of said Exchange, to be sold by him for and on account of the owner thereof; and it is also true that,
168 for the same reasons, the persons desiring to buy live stock at said stock yards, whether members of said Exchange or not, prefer to purchase from or by means of members of such Exchange, and thereby to secure the benefits and guaranties of the rules and regulations of said organization; and it is also true that the persons connected with said packing houses and other enterprises desirous of buying cattle, who have become members of said Exchange have thereby agreed to observe the provisions of Rule XVI of said Exchange in their dealings. But it is not true that thereby, and through such members, substantially all of the business of buying and selling live stock at said Kansas City is carried on. On the contrary, persons owning live stock and desiring to sell the same at said city are under no obligation whatever to employ a commission merchant or to employ a member of said Exchange, but are at full liberty to act for themselves in making such sales, and said Kansas City Stock Yards Company extends to such persons all the privileges and facilities afforded by said company. So, too, any person desiring to purchase live stock at said city, or employed to make any such purchase, may, and they constantly do, deal with and buy from the owners direct, and any person who desires to buy cattle at said stock yards, although not a member of said Exchange, is at perfect liberty to purchase the same from any person whatsoever, and that very much the larger part of the cattle purchased for the purpose of being fed and improved in condition are purchased without the intermediation or employment of any commission merchant whatever. It is true also that a very large number of persons do business at said stock yards who are generally known as yard traders, and who buy and sell on their own account, who are not members of said Exchange, and with whom said members deal not only freely, but cheerfully. The only restriction upon members of the Exchange is that contained in Rule XVI, to wit, that they will not deal with a person as commission merchant who violates the rules of said Exchange, or is a suspended or expelled member thereof.

Said commission merchants are in nowise concerned in the business of said Kansas City Stock Yards Company. Said company has sole charge of its yards and appliances, the
169 only connection of members of said exchange with said matters and said live stock being to execute the commission entrusted to them and to see that the interests of their employers are faithfully and conscientiously protected and furthered. While it is true that very largely by the efforts of these defendants, the high character of said exchange, the public confidence in the integrity of its members and the fairness and validity of its rules and regulations, the excellent character of the facilities provided by said organization, that Kansas City is ranked next to Chicago as a point at which more live stock is handled than at any other point in the world, these defendants are informed by counsel, and believe, that said stock yards does not constitute a public market, but is of merely a private character. The live stock coming to said stock yards is placed in proper pens provided by said Stock Yards Company, and are therein yarded until a sale is negotiated, and the commission merchant selling the same has no control or direction as to the subsequent shipment, reshipment, removal or other subsequent disposition of said live stock. Sometimes said live stock is unloaded and penned in one state and sometimes in another, but at all times a sale thereof is made wholly and completely either in one of said states or the other. It is not true that said stock yards afford the only available means or place in the territory mentioned in the bill of complaint for the sale, purchase and exchange of live stock, but, on the contrary, much the greater portion of the live stock sold and purchased in said territory is by means of negotiations and transactions at points other than said stock yards, and without the interposition of any member of said exchange; and it is only when any owner of live stock desires to ship his cattle to said yards, or an intending purchaser desires to [purchaser] at said yards, that the facilities thereof are utilized. When a commission merchant is employed to make sale of live stock consigned to said stock yards, he negotiates a sale thereof either in the State of Missouri
170 or in the State of Kansas, without regard to the then location of said live stock. With the exception of the firm of Greer, Mills & Company, which was first suspended from membership in the exchange for non-payment of a fine imposed for a violation of the rules thereof, and which subsequently voluntarily withdrew from said exchange, all of the commission merchants exercising their occupation at said Kansas City stock yards are members of said exchange.

The defendants say that whenever drafts are drawn on a commission merchant, the same are paid either at the place

where payable by the terms thereof, or on presentation of said draft to the drawee, and that such place of payment is either in the State of Kansas or in the State of Missouri, accordingly as the particular transaction is closed. The defendants are informed by counsel, and believe, that the exercise of their occupation as commission merchants does not constitute, and is not performed in such a manner as to constitute commerce between the states within the meaning of the constitution or laws of the United States. Such members have no part in or control over the disposition of live stock sold by them to others, nor of live stock purchased by them as commission merchants acting for others. It is not true that a consignee of live stock is not permitted or cannot sell or dispose of the same at said Kansas City stock yards, or that the members of such exchange refuse to buy, negotiate or deal with a non-member thereof. On the contrary, as heretofore stated, unless the person so offering said live stock for sale is a non-member commission merchant violating the rules of said body, or one who has been suspended or expelled therefrom, said members will deal with any person whatsoever, not only freely, but cheerfully. It is not true that an owner of live stock shipped to said stock yards and refusing to employ a member of said exchange, is compelled to reship the same to some other market, nor, indeed, is it true that if such owner should consign live stock to a commission merchant who was a non-member or a suspended or expelled member of said exchange, that such reshipment would become necessary, but such non-member commission merchant

171 can sell the same either to a person not a member of such exchange or willing to deal with such non-member commission merchant, or if such non-member commission merchant desires that a sale shall be made under the rules of said exchange, any member of said exchange will cheerfully serve him according to such rules. The defendants say that there is no unlawful combination among them, or the members of such exchange, or that any person is prevented from delivering live stock to the Kansas City stock yards, nor that the sale of live stock is either hindered or delayed, or that any extra expense or loss to the shipper is entailed, or that any obstruction or embargo on the marketing of live stock shipped from any state or territory whatsoever to said stock yards is placed or created. It is absolutely untrue that the Kansas City Stock Yards Company permits members of said exchange alone to transact business at its stock yards. On the contrary, said Stock Yards Company permits any person whatsoever to transact business at its yards, who will pay the established charges of that company for its services in the premises, and in point of fact, a very large part of the business done at said yards is transacted by persons who are not members of said

exchange, and without the interposition of such members. There are more than one hundred persons engaged in buying and selling for themselves and on their own account, who have their offices and places of business at said yards and who are not members of said exchange, and with whom the members of said exchange, as above stated, constantly deal, selling to and buying from them whenever the interests of their clients are served thereby. It is the first aim and purpose of said members to serve their principals and to protect and advance their interests; but they submit that they are under no obligations to extend the privileges of said exchange to a person who is a non-member thereof, who has violated its rules and been suspended from membership, and who has voluntarily withdrawn therefrom and announced his purpose to carry on his business as a competitor of the members of such exchange to the destruction of said organization and its rules and to the injury of his competitors; and the defendants further submit that they cannot be compelled to deal with a non-member of their organization, or a person violating
172 its rules, or who has been suspended for such violation, or who has withdrawn therefrom, or who has announced his intention to destroy said organization and to compete with the members thereof, nor, indeed, that said defendants can be compelled to deal with any person whatsoever, and they further submit that they had a right to establish said exchange and now have a right to maintain the same, to agree to and observe the articles, rules and regulations hereinbefore set out, and to require an observance thereof on the part of their associates so long as they desire to retain the privileges of membership in said body. They deny that any of said rules or by-laws are in restraint of trade or commerce between the states or otherwise, or that they were or are intended to create a monopoly in contravention of the laws of the United States, or in any other way whatsoever. On the contrary they charge that each and every one of said rules is in all respects legal and binding, and in harmony with the rules and regulations of commercial exchanges which have existed for more than one hundred years, and which are now to be found in every city of importance in the United States and throughout the world.

It is true that all the members of said exchange have agreed to be bound by and conform to the provisions of rule IX, set out in the bill of complaint, in the sense that by violating the same they subject themselves to the penalties therein provided, or in default of payment of a fine properly imposed for such violation, to suspension or expulsion from said organization, but free at any time to surrender their membership and to voluntarily withdraw from said body. The board of directors of said exchange have not only enforced said rule IX

against members of said exchange, but have likewise enforced, in the manner therein provided, the other rules of said body, and that on the whole more members have been disciplined for violating other rules than for violations of said rule IX.

The defendants deny that by the adoption of said articles of association, rules and by-laws, or by associating themselves together in said association known as the Kansas City Live Stock Exchange, or in carrying out the said articles, rules
173 or by-laws, or by the manner of conducting their occupation as commission merchants, or otherwise, they have conspired or confederated together in violation of any law of the United States whatsoever, or that they have agreed or confederated together to monopolize the business of buying and selling live stock at said Kansas City stock yards, or to illegally fix and establish a minimum price for buying and selling such live stock, or that they have in restraint of trade or commerce between the states, or otherwise, confederated together to prevent or restrain the free transmission of information respecting the state of the market of said Kansas City by telegraphic message or information to the various states or territories mentioned in said bill of complaint, or any one of them, or that by the adoption or enforcement of said rule IX they, or either of them, have restricted the free employment of agents or solicitors in the prosecution of the occupation in which said defendants are engaged as live stock commission merchants or otherwise. The defendants say that the rates of commission established by them are the same as those which prevail in other cities where live stock is sold through the interposition of live stock commission merchants, and that the same are fair and reasonable, and refer wholly to compensation to be made for personal services to be rendered by the associates in the exercise of their occupation as commission merchants; that the provisions of said rule IX in reference to sending prepaid telegrams reporting the state of the market, other than reports to persons who have consigned live stock to said exchange for sale, or who are desirous of purchasing live stock at said stock yards, and the provisions relative to the matter of solicitors to be employed by members of said exchange, are not only proper and reasonable, but long experience has shown that such rules are necessary in order to prevent stealthy and unfair warfare between the members, and for the protection of the members from ruinous expenditures, and for the fair, proper and honorable conduct of said occupation.

The defendants say that the purposes of the organization of said exchange and the adoption and enforcement of
174 its rules and by-laws have hereinbefore been correctly set forth, and are not as charged in the bill of complaint.

The persons who organized said exchange, and who have constituted the membership thereof from the date of its organization to the present, recognize that it would be impossible to fairly and properly conduct the sale of live stock upon commission without the existence of proper rules and an organization to establish and enforce them. That the benefits and advantages thereof and the facilities provided thereby, not only contributed largely to making Kansas City a desirable point for the sale and purchase of live stock, but have contributed more to maintain it as such and to attract customers thereto, than all other conditions combined, whereby the public has been and is being greatly benefited. Experience has shown that to the success of such an organization it is absolutely essential that there shall be a uniform schedule of reasonable commissions, and that all the members shall observe the same, and that by permitting evasions or violations of such schedule a condition is created by which irresponsible persons might and would bring about a state of unhealthy cutting of prices, a practice unfair to shippers and purchasers and ruinous to responsible persons who carry on the occupation of commission merchants fairly and with due regard to the interests of the persons employing them, and to the standing and future of the said stock yards as a trading point. The defendants admit that they desire to instill so great a degree of public confidence, to provide rules so fair and equitable and facilities so convenient, and at rates so reasonable, that persons desiring to ship cattle to said stock yards will be attracted to employ some member of said exchange to act as his commission merchant in the sale and disposition thereof. They have no purpose, however, and have had none, to prevent the shipment and consignment of live stock to persons other than themselves, nor to compel shippers to pay them the commissions provided by the rules of such organization, nor from placing their property on sale at said stock yards, without paying such commission. It is entirely optional with any such shipper whether he will make such shipment, or employ a com-
175 mission merchant, or place his property on sale at said yards; but the defendants admit that it is to the interest of every shipper of live stock to make such shipment and employment. They deny that they have had or now have any purpose to [monopolise] the business of receiving, handling, selling, buying or reshipping of live stock received at said stock yards, or raised in said states and territories and shipped to said yards, or to prevent the sale of live stock at said yards by any person not a member of said exchange, but they admit that their rules, regulations, facilities, and charges are such that it is greatly to the interest of such shippers and to the public that a member of such exchange shall be em-

ployed as a commission merchant to effect the sale of said property. They have no desire to prevent any person from acting as a commission merchant in the sale of live stock at said Kansas City, but they admit that it is not to the interest of the public, or of any shipper of live stock, to employ such non-member, and that individually and collectively, the provisions of their articles of association, rules and by-laws are invoked for the purpose of preventing the success of any competitor either in his effort to destroy said exchange or to succeed in driving the competitors of such parties from the field. Instead of having any purpose to obstruct or retard the owners of live stock in the sale and disposition of their property at Kansas City stock yards, their whole effort is to provide facilities for making such sales, to attract persons desiring to sell or to buy stock and to promote and increase the volume of business done at said yards. They say that said Kansas City Live Stock Exchange has no control over or connection with any stock yards at any other city to which cattle are reshipped or forwarded from said Kansas City.

Having fully answered, the defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

KARNES, HOLMES & KRAUTHOFF,
McGREW, WATSON & WATSON,
HUTCHINGS & KEPLINGER,
Solicitors for said Defendants.

C. F. HUTCHINGS,
L. C. KRAUTHOFF,
Of Counsel.

176 State of Missouri,
County of Jackson—ss.

The persons whose names are hereunto subscribed, being severally duly sworn, upon their respective oaths, do say that they are members of the board of directors of the Kansas City Live Stock Exchange; that as such and on behalf and as the representatives and agents of the defendants in this case they verify this answer, and do say that the matters and facts stated in the said answer, as of their own knowledge and information, are true, and that the matters and facts stated therein as of belief, they believe to be true.

A. E. Beggs,
M. D. Scruggs,
E. J. Rickes,
W. S. Hannah,
Jas. Keeney,
Wm. M. Schwartz,
Jno. C. McCoy,
Geo. R. Barse,
R. P. Woodbury, Sec'y,
J. T. Kiely,
Frank Siegel.

Sworn to and subscribed before me this 22nd day of February, 1897.

My commission expires April 20, 1900.

[Seal] HENRY C. PAGE,
Notary Public, Jackson County, Mo.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Answer of defendants. Filed Feb. 27, 1897. Geo. F. Sharitt, Clerk.

* * * * * * * * *

179 In the Circuit Court of the United States for the District of Kansas. First Division.

REPLICATION.

The United States, Complainant,
No. 7402. vs.
Henry Hopkins et al., Defendants.

Now comes the United States of America, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants, for replication thereunto saith that he does and will ever maintain his said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, [mainted] and prove as this Honorable Court shall direct, as humbly [as] in his said bill he has already prayed. W. C. PERRY,
U. S. Atty. and Solr. for Complt.

Indorsed: 7402. United States vs. Henry Hopkins. Replication. Filed April 5th, 1897. Geo. F. Sharitt, Clerk. W. C. Perry, U. S. Atty. and Solr. for Complt.

180 In the Circuit Court of the United States, District of Kansas.

STIPULATION.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

Now come Hutchings & Keplinger, attorneys for The Kansas City Live Stock Exchange, and enter the appearance of The

Kansas City Live Stock Exchange, and each and every member thereof, a list of the names of the members of said exchange being hereto attached and made a part of this stipulation.

It is further stipulated that if there are any mistakes in the names of the membership in the list hereto attached, or any changes in said membership from the time of the commencement of the foregoing suit to the trial thereof, that said attorneys shall and do hereby enter the appearance of every member. It being the intention of this stipulation to enter the appearance of the entire body of members of The Kansas City Live Stock Exchange, as defendants in said cause for all purposes of this case and for hearing thereof on the merits. Defendants reserve until June 7th, 1897, to answer.

HUTCHINGS & KEPLINGER,
Attorneys for Defendants.

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MEMBERS OF THE
KANSAS CITY LIVE STOCK EXCHANGE.

APRIL 1, 1896.

No. of Certificate.	NAME.	No. of Certificate.	NAME.	No. of Certificate.	NAME.
146*a*	Abbott, H. C.	126*a*	Clawson, G. W.	110	Fish, F. O.
38*a*	Abbott, Reuben.	146	Clotfelter, J. H.	29*a*	Flato, F. W., Jr.
113*a*	Adams, J. W.	168	Cole, J. E.	272	Fleming, J. A.
126	Allen, L. A.	114	Cooper, Frank	173*a*	Forest, W. B.
162*a*	Anderson, J. C.	22	Cox, R. E.	136*a*	Forsha, F. A.
230*a*	Andrews, L. B.	279	Crider, C. P	202	Foster, G. W.
60	Armour, K. B.	134	Crider, Zeb F.	102	Fowler, G. A.
59	Armour, S. B.	156*a*	Crowley, Jere.	243	Frew, LaFayette
183	Atchison, Wm.	171*a*	Crowley, J. B.		
		226	Crum, S. G.	204*a*	Gann, G. I.
105*a*	Baker, H. M.			40*a*	Garrett, C. S.
35	Baldwin, B. F.	56*a*	Daniels, C. T.	98	Gillespie, A. J.
40	Baldwin, C. P.	194*a*	Davis, C. A.	101	Gillespie, J. F.
79	Baldwin, I. J.	83	Dick, James	100	Gillespie, L. J.
258	Barnes, I. S.	261	Dixon, Charles	99	Gillespie, T. E.
31	Barse, G. R.	163*a*	Dixon, C. G.	58*a*	Grant, W. F.
247	Bass, R. T.	39	Dobyns, J. D.	221	Greer, N. B.
86	Beggs, A. E.	68*a*	Doerr, G. W.		
231*a*	Bell, G. T.	82	Dold, J. C.	157	Hale, J. E.
206*a*	Benson, Wells	27*a*	Dorsett, H. B.	291	Hall, G. T.
142*a*	Bishop, F. W.	190*a*	Dorsey, J. S.	105	Hall, J. C.
225*a*	Black, C. W.	92*a*	Drumm, Andrew	148*a*	Hall, W. W.
234*a*	Blair, J. A.	84*a*	Duke, R. H.	277	Hannah, W. S.
61	Bolen, G. W.	233*a*	Duncan, B. M.	245	Harrington, J. H.
143*a*	Booth, C. J.	193*a*	Dyer, John	212*a*	Harris, P. H.
178*a*	Boswell, E. R.			111*a*	Henderson, Alex.
108	Brinkerhoff, J. O.	82*a*	Eaman, T. J.	3	Henrici, W. C.
223	Bridgeford, C. G.	116*a*	Egan, L. M.	216*a*	Holmes, George
236*a*	Brooks, D. B.	292	Ecton, G. T.	122*a*	Hopkins, Henry
159*a*	Brown, Hamer	96*a*	Edgecomb, E. F.	213	Hunt, A. B.
63	Burnside, S. G.	145*a*	Ehrke, Fred.	296	Huston, W. F.
		113	Elmore, Wm.	92*a*	Hutton, T. S.
24*a*	Cable, M. M.	15	Emmert, J. P.	215	Hyre, D. N.
121*a*	Campbell, G. R.	274	Epperson, A. J.		
106	Campbell, G. W.	25	Epperson, Wm.	298	Inman, J. E.
252	Campbell, R. K.	6*a*	Evans, A. G.	178	Irwin, S. D.
139*a*	Campbell, S. W.	138*a*	Eubank, J. D.	124	Irwin, J. N.
87	Canon, C. R.	94*a*	Ewart, W. J.	217*a*	Isaacson, A.
255	Carroll, M. W.				
66*a*	Cassidy, A. C.	165*a*	Farmer, T. F.	42	Jackman, N. T.
67*a*	Cassidy, W. L.	191*a*	Felt, S. D.	13*a*	Jardon, F. X.
48	Child, H. P.	250	Finn, P. H.	196*a*	Jones, G. E.
172*a*	Clay, John, Jr.	235*a*	Firebaugh, J. W.	297	Jones, L. S.

MEMBERS OF THE KANSAS CITY LIVE STOCK EXCHANGE.—Continued.

No. of Certificate.	NAME.	No. of Certificate.	NAME.	No. of Certificate.	NAME.
83*a*	Jones, S. F.	133	Nute, G. H.	268	Sparrow, W. N.
		283	Nutter, L. O.	166*a*	Stanley, Madison
109	Keck, G. O.			239*a*	Standish, J. I.
281	Keeney, G. W.	112	Offutt, H. C.	172	St. Clair, M. W.
246	Keeney, I. N.	71*a*	Offutt, R. T.	243*a*	Steele, C. C.
119	Keeney, James	96	Olander, J. W.	186*a*	Steele, Michael
128*a*	Kelly, Thomas			17	Stephens, James
177	Kendricks, W. L.	78*a*	Parlin, E. M.	21*a*	Stockwell, G. W.
137	Keys, C. M.	240*a*	Parrott, P. W.	149*a*	Stoller, F. R.
118	Keys, Isaac	202*a*	Patterson, H. B.	138	Stoller, J. R.
118*a*	Kiely, J. T.	289	Patton, T. B.	18	Straight, H. L.
76	Kirk, E. F.	66	Payne, J. H.	175*a*	Swazey, E. L.
69	Knollin, A. J.	90	Payne, J. N.	149	Swift, E. F.
164*a*	Knopp, Louis	32	Pieronnet, C. A.		
		253	Pieronnet, R. R.	224	Tamblyn, W. L.
34	Ladd, T. E.	64	Penny, A. W.	1*a*	Talbot, E. E.
249	Ladd, W. L.	4*a*	Peters, Clay	189	Taylor, J. F.
155*a*	Lane, H. H.	127	Peters, M. S.	295	Taylor, W. H.
207	Larimer, W. H. H.	91*a*	Peters, O. C.	45	Theis, Henry
21	Larmon, J. E.	227*a*	Peters, S. D.	212	Timmons, T. F.
106*a*	Lazarus, Sam'l	209	Pierson, G. H.	208	Tinkham, W. P.
81*a*	Lee, T. B.	224*a*	Pierson, W. E.	160*a*	Titsworth, J. P.
9 *a*	Leigh, Chas.	209	Prigg, R. H.	2	Tower, H. B.
259	Lennon, L. A.			238*a*	Trowbridge, E. E.
195*a*	Lincoln, H. S.	116	Reed Gilman	285	Trower, Harry
220*a*	Lusk, L.	229	Reed, H. N.	286	Trower, O. B.
		57	Reid, W. J.	287	Trower, S. R.
55	Martin, J. W.	215*a*	Rice, D. R.	150	Trower, Thomas
84*a*	Martin, L. T.	185	Rice, M. W.		
135*a*	McAlister, W. B.	211	Rickes, E. J.	122	Underwood, D. S.
120	McCoy, F. W.	167*a*	Robinson, C. O.		
68	McCoy, J. C.	24	Rogers, W. A.	128	Verner, M. J.
254	McCoy, Woodson	159	Rust, Eugene		
181*a*	McDonald, T. F.	147*a*	Ryan, R. W.	1	Waite, J. H.
240	McIntosh, J. S.			168*a*	Waite, J. F.
219*a*	McMurray, J. P.	176	Salisbury, John	7*a*	Walden, G. M.
6	Means, C. G.	200*a*	Sanders, G. W.	180*a*	Walker, S. R.
8	Means, C. H.	201*a*	Sawtell, W. H.	203*a*	Wallingford, H. E.
7	Means, W. W.	273	Scaling, Samuel	11	Welch, B. L.
44*a*	Megredy, J. T.	156	Schulz, F. W.	209*a*	Welch, J. A.
133*a*	Miller, A. A.	81	Schwartz, W. M.	245*a*	Welhener, F. W.
208*a*	Miller, W. O.	280	Scroggin, J. C.	127*a*	Wells, R. N.
23	Mitchener, F. B.	182	Scruggs, M. D.	210	Westfall, G. W.
228*a*	Moffett, F. S.	222*a*	Shaeffer, C. A.	130	White, L. E.
229*a*	Moffett, John	134*a*	Shirley, C. H.	38	White, R. C.
265	Montgomery, P.	207*a*	Shoemaker, T. C.	110*a*	Wilhite, J. R.
43	Moore, W. F.	237	Siegel, Frank	187*a*	Wilson, Erasmus
46	Morse, C. F.	43*a*	Simcock, J. H.	187	Wise, R. H.
30*a*	Mustion, A. T.	222	Smith E. M.	111	Woodbury, R. P.
		5*a*	Snider, A. J.	48*a*	Woods, S. P.
164	Neff, J. H.	220	Snider, C. A.	67	Wright, William
25*a*	Nichols, G. N.	75	Southee, J. K.		
130*a*	Noel, W. A.	188	Sparrow, H. M.		

a New Series Certificates.

Alexander, J. S.	Curtis, W. E.	Elliott, A. J.
Cowgill, James	Holmes, Benj.	Michael, W. A.
Grabenheimer, Sam'l	Holmes, Geo., Jr.	Hargis, J. R.
Tamblin, G. S.	Holmes, Guy	Jones, D. L.
Lloyd, E.	Baker, Josiah	Robinson, T. G.
Warren, A. H.	Ketcham, P. H.	McWilliams, G. A.
Russell, J. R.	Olinger, David	Peters, J. P.
Lloyd, E.	Robertson, J. D.	Sander, F. O.
Shelby, T. C.	Sulphen, J. A.	Young, L. F.
Blanchard, M. F.	Burwell, M. F.	

Indorsed: No. 7402. The United States, complainant, vs. Henry Hopkins et al., members of the Kansas City Live Stock Exchange. Stipulation entering appearance of all members of the exchange. Filed April 30th, 1897. Geo. F. Sharitt, Clerk.

182 In the Circuit Court of the United States for the District of Kansas. First Division.

United States of America
v.
Henry Hopkins et al., as members of the Kansas City Live Stock Exchange.

The persons whose names are hereunto subscribed, being duly sworn, upon their respective oaths do state:

They are informed by their counsel in this case that all of the matters and facts alleged in the bill of complaint herein have been fully covered, traversed and explained by the answer herein, which has been duly sworn to and which the affiants hereby adopt as part of this affidavit. They are also informed that on the 19th day of February, 1897, their counsel were served with certain affidavits verified by Norman B. Greer, A. J. Gillespie, William Winder and R. T. Bass, the greater part of which, so affiants are informed by their counsel, do not relate to or have any bearing upon the allegations of the bill of complaint, but consist of extraneous matters having reference to private controversies between the firm of Greer, Mills & Company and the Kansas City Live Stock Exchange and between said Greer, Mills & Company and certain individual members of said exchange. Many of the matters in said affidavit are stated upon hearsay, or in terms so general and indefinite that these affiants are unable to treat them in detail. They say that the articles of association, rules, regulations and by-laws of said Kansas City Live Stock Exchange were entered into and adopted without reference to said Greer, Mills & Company, or any particular person and without any knowledge or intimation that said Greer, Mills & Company would subsequently become parties to the same, or be in anywise affected thereby. The members of said firm, in
183 the year 1892, applied for membership in said exchange, were admitted thereto, signed the articles of association, rules, regulations and by-laws and bound themselves to keep and perform the terms and provisions thereof. Several years ago the said firm violated the same, but such violation was excused and the penalty imposed therefor remitted on the faith of a specific promise by said firm that they would thereafter faithfully keep and observe the same. In the year 1895, the members of said firm, after due notice and proper hearing, were found guilty of having again violated said rules, and certain fines were imposed upon them. The payment of these fines was refused, and the board of directors, as required by the rules of said exchange, suspended said members, which suspension now remains in full force and effect. Subse-

quently the said Greer, Mills & Company, voluntarily withdrew from said association and surrendered their membership therein. The articles of association, rules, regulations and by-laws of the Kansas City Live Stock Exchange are in all substantial respects, duplicates of those of the Chicago Live Stock Exchange, and in many respects are literal transcripts thereof; that the members of said Greer, Mills & Company have long since been members of said Chicago body, and still are such members, and at various times members of said firm have been officially connected with said Chicago exchange, and one of them now has such connection; that upon their withdrawal from said Kansas City Live Stock Exchange, the said firm announced its purpose to destroy the said body and its usefulness and to enter into active competition with the members thereof, along lines violative of and contrary to the rules of said exchange and elected to exercise their occupation as commission merchants as non-members of said exchange and without any of the privileges extended to members thereof.

The affiants say that there never has been, at any time, or by any person, to the knowledge of the officers and directors of said exchange, any effort, attempt, or purpose to "boycott" said Greer, Mills [—] Company, and that if there had been such effort, attempt, or purpose, these affiants would have known the same, but that ever since their suspension
184 from membership, and their withdrawal from said exchange, the said Greer, Mills & Company, their agents and representatives, have been industriously circulating and advertising that they have been subjected to a "boycott" for the purpose of creating sympathy for themselves and exciting animosity against said exchange and the members thereof and laying the foundation for litigation in the various courts. The affiants say that Messrs. Wallace, Popham & Beggs, who are the authors of the alleged letters and telegrams set forth in the affidavit of Norman B. Greer, were, at the time of sending the same, solicitors and agents for said Greer, Mills & Company, and affiants believe that said communications constitute a part of the plan and purpose of the said Greer, Mills & Company to manufacture evidence tending to show that they have been subjected to what is known as a "boycott." That in truth and in fact, none of the officers or directors of said exchange, nor any member thereof, by or with the knowledge, authority or consent of said officers, directors or organization, have, at any time, directly or indirectly, in thought or in deed, sought or intended to go beyond the precise and literal provisions of the articles of association, rules, regulations or by-laws of said exchange in their treatment of said Greer, Mills & Company, their representatives and agents, either individually, or in the carrying on of their business, or in the

exercise of their occupation as commission merchants. The officers and directors of said exchange and the members thereof, so far as they have acted or spoken by authority, have always treated the controversy as involving simply a question whether members of said exchange will observe their obligations under rule 16 thereof, or elect to withdraw from said exchange and to deal with said Greer, Mills & Company as commission merchants in preference to retaining such membership. There is not now, and never has been, the slightest difficulty in Greer, Mills & Company selling live stock belonging to them at the Kansas City stock yards in the same manner as other owners of live stock may sell the same, and no member of said exchange would hesitate for a moment to buy live stock belonging to said Greer, Mills & Company, or
185 any other non-member of said exchange. Nor is there the slightest objection to the purchase by Greer, Mills & Company, of any live stock at said stock yards from members of said exchange, or non-members thereof. The only point of controversy is whether said Greer, Mills & Company, as suspended members of said exchange, are entitled to compel members of said exchange to deal with them in reference to live stock which the said Greer, Mills & Company are offering for sale as commission merchants and as competitors to the members of said exchange who are engaged in the same occupation, or to compel those members of said Live Stock Exchange, who, although not engaged in the commission business, are interested in the maintenance of the benefits and advantages of the exchange, to purchase live stock from the said Greer, Mills & Company, which they offer as commission merchants. If the said Greer, Mills & Company desire to act as commission merchants in violation of the rules of said exchange, and in competition of the members of said body, there is nothing to prevent non-members from dealing with them if they so desire, nor to prevent any member of said exchange from dealing with them if such member prefers to sever his membership in said exchange.

The affiants say that there are at the Kansas City stock yards, a large number of persons engaged in buying and selling live stock on their own account who are known as yard traders or speculators, who, to the number of 125 or more, have formed a Traders' Exchange for the protection of their interests, and that with very few exceptions, the members of said Traders' Exchange are not members of the Kansas City Live Stock Exchange, and are free, at their pleasure, to deal with whomsoever they may choose. It is also a fact that a large number of persons attend said stock yards for the purpose of purchasing live stock to use as feeders or stockers, and that such persons are not members of said exchange and are

free to purchase from whom and as they please, and do, in the great majority of cases, purchase without the employment of a commission merchant and without regard to whether the person from whom they are buying is a member of said
186 exchange or not.

The affiants say that the persons engaged in operating packing houses at said Kansas City, recognize, as do the persons engaged in commercial pursuits in all the large cities of the world, that the establishment and maintenance of an exchange is not only an absolute necessity to the proper transaction of business, but a decided advantage to the public. By means of the rules of said exchange, honorable conduct is inculcated and required to be observed in all transactions; bad faith, extortion and failure to keep business obligations are punished, and methods and facilities are provided by which the business is done expeditiously, fairly, honorably, and in the interest of all concerned. More violations of rules in respect of these matters have been made the occasion of discipline by the Kansas City Live Stock Exchange and generally by commercial exchanges throughout the United States, than for other causes. It is a feature of every commercial exchange composed of persons acting as brokers or commission merchants in the sale of property, to fix a schedule of reasonable and minimum commissions and to require the same to be observed and to prohibit any evasion of the same. The reasons for this are universally recognized, that thereby all the elements of a fair and healthy competition are fully preserved, and that the interests of shippers and buyers are alike protected.

If persons were allowed to proceed at a trading point such as the Kansas City stock yards, with its great volume of business, without definite rules to govern their transactions, great confusion would result; there would be a want of adequate facilities, and numerous instances of wrong-doing would go undetected and unpunished. If each commission merchant were left to arrange his compensation with his employer, a ruinous condition of competition would be instituted and the utmost confusion result. Irresponsible persons would institute a cutting of rates, or a rate war, for the sole purpose of attracting a temporary custom without regard to the interests of their clients or the future standing of the market; that responsible parties engaged in said occupation,
187 whose interests and desires are to maintain the high standing of said exchange and of said city and stock yards as a trading point for the sale and purchase of live stock would either have to permit such parties to destroy the reputation thereof, which has been built up by long years of honor-

able dealing and by other attractions afforded by means of said exchange, or bring ruin and disaster upon themselves by likewise undertaking to do business at said ruinous figures. The rates provided for are no higher than the fair and reasonable compensation for the services rendered, and are the same as those which prevail at other stock yards, and the number of commission merchants belonging to said exchange and the facilities afforded by the rules and instrumentalities of said body are universally recognized and complimented as fully adequate to all the needs and demands of the public and of the persons engaged or interested in the purchase and sale of live stock at said city. Referring to the allegations of the bill of complaint verified as absolutely true, by Norman B. Greer, to the effect that members of the Kansas City Live Stock Exchange alone were permitted by said Kansas City Stock Yards [—] to transact business at its stock yards, affiants say that the same is absolutely and unqualifiedly false, and is contradicted, not only by the affidavits to which their attention has been called, but that in the Kansas City World, of January 17, 1897, there was published, in a special edition, intended for unusually wide circulation, the following advertisement:

J. E. GREER, FRANK O. MILLS, JESSE SHERWOOD, } Chicago.
WALLACE FINCH, GEO. MINKEL, F. O. MORGAN, } St. Louis.

GREER, MILLS & CO.

LIVE STOCK

COMMISSION MERCHANTS.

The only firm doing business independently of and NOT A MEMBER OF THE K. C. LIVE STOCK EXCHANGE.

N. B. GREER, Manager and Cattle Salesman.
R. T. BASS, Hog and Sheep Salesman.
WM. WINDER, CLAY G. MOYES, } Stocker and Feeder Buyers.
JOS. H. THOMSON, Office Manager.

Rooms 230 and 231, Kansas City Stock Yards.

Your Interests are Absolutely Safe in Our Hands. Consign to us and Receive the Highest Market Prices.

We keep our accounts with the following banks: The Drovers' National Bank, Chicago; The First National Bank, Chicago; The Stock Yards Bank, Nat'l Stock Yards (East St. Louis), St. Clair Co., Ill: The National Bank of Commerce, St. Louis; The Interstate National Bank, Kansas City Stock Yards.

We will send you the Kansas City World on application.

188 The affiants further say that in the same edition, under the heading of "Some of the people who have made Kansas City the greatest stock market in the world," were

published wood cuts of the features of over 100 members of said exchange, including cuts of persons bearing superscriptions as follows: J. E. Greer, of Greer, Mills & Company; Frank O. Mills, of Greer, Mills & Company; Norman G. Greer, manager of Greer, Mills & Company; James H. Thompson, office manager of Greer, Mills & Company and R. T. Bass, of Greer, Mills & Company, a copy of which publication is hereto attached and made a part hereof, marked Exhibit "A." These affiants believe that it is true as stated in said publication, that the members of the Kansas City Live Stock Exchange have in fact, raised Kansas City to the position it now occupies as an important center of live stock interests of the United States, and also believe that no greater injury could be inflicted upon its enviable position in that respect than the dissolution of the said exchange and an interference with the existence of the articles of association, rules, regulations and by-laws thereof, which have produced a result so eminently beneficial to the public, and so confessedly of advantage to all concerned.

E. J. Rickes,
W. S. Hannah,
A. E. Beggs,
M. D. Scruggs,
Wm. M. Schwartz,
Frank Siegel,
Jno. C. McCoy,
Geo. R. Barse,
R. P. Woodbury, Sec'y,
Jas. Keeney,
J. T. Kiely.

Subscribed and sworn to before me this 22nd day of February 1897.

[Seal] HENRY C. PAGE,
Notary Public, Jackson Co., Mo.

My commission expires April 20, 1900.

* * * * * * * * *

198 Indorsed: No. 7402. United States vs. Kansas City Live Stock Exchange. Affidavits for defendants. Filed May 31, 1897. Geo. F. Sharitt, Clerk.

199 In the Circuit Court of the United States for the District of Kansas, First Division.

United States
v.
Henry Hopkins et al.

State of Missouri,
County of Jackson—ss

The undersigned, being duly sworn, upon their respective oaths do say that they are now, and have been since the years stated opposite their respective names, engaged in the occupation of live stock commission merchants at the Kansas City stock yards and have been during all that period, familiar

with the rates of commissions charged by such merchants at said yards. They have been informed that some one has made an affidavit that since the organization of the Kansas City Live Stock Exchange such rates of commissions have been increased. Such is not the fact; on the contrary, the very reverse is the case, and said rates have been substantially decreased by the rules of said exchange as originally agreed upon and by amendments thereto from time to time. The fact in question is well and generally known to all persons who have been doing business at or with said yards during the period since they were first opened. Any statement to the contrary must be based upon want of knowledge or embody a decided mistake. Business at said yards was first opened about 1871. The commissions for selling cattle at that period were fifty cents per head and no distinction was made because a car contained more than a given number. These commissions continued until the exchange was organized in 1886, when it was provided that if a car contained more than twenty-four head, only $12 should be charged. The commissions charged for selling hogs, sheep and calves in 1871, computed per head, were the same as at present, but in mixed carloads, the
200 rates are substantially lower under the rules of the exchange than they previously were. The rates prescribed by said rules are as low as those which prevail at any other live stock trading point, and in many respects lower than those which prevail at some of said points. From long experience, it is a conceded fact that the rates prevailing at Kansas City are not only reasonable and satisfactory to all fair-minded shippers and other persons doing business at said point who are informed on the subject, but they are as low as such services can afford to be rendered at by reputable, responsible and competent commiss'on merchants. We believe that an examination into the matter will disclose that the necessary expenses of conducting the occupation of commission merchants at said Kansas City stock yards, for rent, salesmen, book-keepers, clerks, solicitors, telegrams, postage, and incidentals, will aggregate from fifty to seventy per cent of the amounts earned as commissions, leaving the balance only as net returns to the parties; and that these returns, unless it be in rare and exceptional cases for a limited period, do not yield more than a living return on the capital invested and labor done; for the greater part, the members of said exchange, although they have been engaged in the occupation for years, are possessed of limited means only.

(Signed)	R. C. WHITE,	1873.
	WM. A. ROGERS,	1871.
	GEO. HOLMES,	1875.
	J. H. WAITE,	1882.
	JNO. E. HALE,	1874.
	GILMAN REED,	1871.

Sworn to and subscribed before me this 9th day of March 1897.
[Seal] JOHN H. THACHER,
Notary Public, Jackson County, Missouri.
My commission expires Dec. 10, 1899.

Indorsed: 7402. United States vs. Henry Hopkins et al. Affidavits for deft's. Filed May 31, 1897. Geo. F. Sharitt, Clerk.

AFFIDAVITS IN CHIEF FILED BY COMPLAINANT.

* * * * * * * * *

249 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

Depositions taken before me by consent, notice waived, this 1st day of March, 1897, in my office in the Exchange building at the Kansas City Stock Yards. Taken on behalf of plaintiff.

R. P. Woodbury being first duly sworn deposes and says: I am the secretary of the Kansas City Live Stock Exchange, an unincorporated association having its chief offices in the Live Stock Exchange building at the Kansas City stock yards at the State line between Kansas and Missouri, my office being in Kansas City, Mo. I am a resident of Kansas City, Mo. I have been secretary of said exchange ever since the date of its organization in 1886. I have the keeping of the records and books of the Kansas City Live Stock Exchange including the articles of association, rules and by-laws and the roll of membership, and am the proper custodian of the same.

The articles of association, rules and by-laws are in a book kept for that purpose in which the members on joining the association enroll their names or subscribe their names. Each member joining the association is required to subscribe his name in this book among the roll of members as agreeing to the articles of association, rules and by-laws. The book attached to the defendants' answer in this case is a true copy of the articles of association, rules and by-laws of said Kansas City Live Stock Exchange, as the same appears in the book in which is kept the roll of members. The list of names attached to this affidavit marked "Exhibit A" is a correct list of the members of the Kansas City Live Stock Exchange up to March 1, 1897, and the same is made a part of this deposition. The minutes of the board of directors kept by affiant as secretary has the following entries under date of November 17th,

1896, a copy of which entries taken from said minute book are in words and figures as follows, to wit: "The secretary reported that the following communications from Messrs. Greer, Mills & Co. had been handed to him on November 16, 1896, accompanied by the certificates of membership therein referred to." The board acted upon my report as above stated and the record of the action of the board appears in the minutes a copy of which minutes taken from said book are given in Exhibit "B" hereto attached and made a part of this deposition. After the board of directors had taken this action they caused a copy of said resolutions of the date of Nov. 17, 1896, to be posted on the bulletin boards in the Exchange building at the Kansas City stock yards, and the same was posted the same date as the resolution. Affiant turns to the minutes of the action of the board of directors of June 3rd, 1895, and states that in relation to the case of one P. H. Harris, who was at that time doing business in or about the Exchange building, and was carrying speculators on commission, the same being the kind of business done by some of the commission merchants, at that time P. H. Harris was not a member of the Kansas City Live Stock Exchange. In the minutes of the proceedings of date June 3rd, 1895, I find the following entry: "Mr. P. H. Harris was also invited before the board to make a statement if he was carrying speculators on commission. It was ordered that he be instructed to take out a membership in this exchange forthwith, or to stop carrying speculators on commission." What I have read is a true copy of the records and proceedings of the board of directors of the Kansas City Live Stock Exchange, and were the proceedings had at a regular meeting of the board of directors. Afterwards Mr. Harris took out a membership or obtained a certificate of membership, and became a member of said Kansas City Live Stock Exchange. His membership was favorably acted upon June 27, 1895. Affiant is shown a letter of date Nov. 5, 1895, written by affiant as secretary of the Kansas City Live Stock Exchange addressed to Miss Jennie Goodwin, a copy of which letter is in words and figures as follows:

"Miss Jennie Goodwin, City.

Dear Miss: At a regular meeting of the board of di-
251 rectors of this exchange held yesterday afternoon, I was instructed to notify you that the time for your obtaining a certificate of membership in this exchange was extended until January 1, 1896. Respectfully yours,

(Signed) R. P. WOODBURY,
Secretary."

(Order of board of directors.)

On cross-examination by Mr. Hutchins the witness saith: Miss Goodwin, the person referred to above, had made an ap-

plication for membership in the exchange, and on Sept. 10, 1895, I had written her the following letter:

"Sept. 10, 1895.

Miss Jennie N. Goodwin, City.

Dear Miss: At a regular adjourned meeting of the board of directors of this exchange held yesterday your application for a membership in this exchange was favorably considered.

Respectfully yours,

(Signed) R. P. WOODBURY."

Subsequently, I think some time in December, 1895, at a meeting of the exchange the members being called together for the purpose of considering the proposition to present Miss Goodwin with a membership free of charge, prior to any action, a letter was received from Miss Goodwin declining to accept a membership as a present, and no further action was ever taken. Referring to the matter of P. H. Harris, I would say that several other persons engaged in business at the stock yards were requested by the exchange to become members, but declined to do so, and no action whatever was taken with reference to such refusal, and the persons so invited, but refusing to become members, continued business unmolested by the exchange. There is no record, since the organization of the exchange, of any action of any kind whatever having been taken by the exchange upon the refusal of any person when invited to become members.

(Question by Mr. Mills, redirect): What person or firm is now doing business as a live stock commission merchant at the Kansas City Stock Yards that are not members of
252 the exchange? Give the names.

Ans. There are none unless it be Greer, Mills & Co. I think Miss Goodwin was doing business of commission merchant at the time and prior to the correspondence above referred to with her concerning taking out memberships. I don't know the date she quit doing a commission business.

R. P. WOODBURY.

Subscribed in my presence, and sworn to before me this 2nd day of March, 1897.

[Seal] ARTHUR RUBLE,
Notary Public.

My commission expires Jan. 22, 1898.

* * * * * * * * *

254 EXHIBIT "B."

Kansas City Live Stock Exchange,
Kansas City, Mo., Nov. 17.

My Dear Sir: At a meeting of the board of directors of the Kansas City Live Stock Exchange, held this date, the following resolutions were unanimously adopted:

Resolved, that the withdrawals of Jefferson E. Greer, Frank O. Mills and Jesse Sherwood, composing the firm of Greer, Mills & Co., from membership in the Kansas City Live Stock Exchange, and the surrender of their respective certificates of membership in said exchange, bearing numbers 59-A, 60-A and 241, be, and the same are hereby accepted; and,

Resolved, That the said acceptance shall be without waiver of, or prejudice to, any rights which this Exchange, or the members thereof, may have against the said Greer, Mills and Sherwood, or either of them, by reason of the fines heretofore assessed against them, because of their violation of the rules of this Exchange; nor shall acceptance operate to relieve said Greer, Mills and Sherwood, or either of them, from the liabilities and penalties resulting from, or incident to, said fines, and the non-payment thereof, and their suspension from membership because of said non-payment; and

Resolved, further, that the secretary be directed to cancel said certificates and to erase the names of said Greer, Mills & Sherwood, from the list of the members of this Exchange, and that he notify said parties of this acceptance of their withdrawal and surrender; and also that he notify the members of this Exchange of such facts and that said Greer, Mills & Sherwood, composing the firm of Greer, Mills & Co. are no longer entitled to any of the privileges of membership in this Exchange, but stand as suspended therefrom, and also as having surrendered the same and every part thereof; and that all members of this Exchange be notified to govern themselves accordingly. Very respectfully,

(Signed) R. P. WOODBURY."

255 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT.

The United States, Plaintiff,
vs.
Henry Hopkins et al., Defendants.

James Plummer, of lawful age, being first duly sworn, deposes and says: He is a resident of Kansas City, Mo. That he has been dealing in live stock, mostly cattle, at the Kansas

City Stock Yards, for seven or eight years last past. That his business consists of buying and selling on this market for himself and on his own account, or what is commonly known as a speculator. The class of cattle affiant buys for the most part, are fat cattle, and bought to resell again on his own account on speculation. Some of the cattle affiant sells to local packers, but the bulk of the cattle he buys here are sold to parties who ship them to other markets for slaughter. Affiant is not a member of the Kansas City Live Stock Exchange, and never has been, and is not a member of what is known as the Traders' Exchange, but is what is called a speculator, buying on his own account and selling on his own account, usually buying from a few head up to a car load at a time. Affiant has never done what is known as a commission business or the buying and selling for others on commission charged for services rendered.

Affiant's long experience in business at the stock yards in Kansas City has made him familiar with the methods of doing business at this market by the Kansas City Live Stock Exchange. With the one exception of Greer, Mills & Co., no one is doing business at this market as live stock commission merchants except members of the Kansas City Live Stock Exchange. With the exception mentioned all parties, either persons, firms or companies that are doing business at this
256 market as commission merchants, that is, buying and selling for others, and charging a commission for the services rendered in buying and selling, are members of the Kansas City Live Stock Exchange. The large bulk of live stock that is bought and sold at this market is handled by the live stock commission merchants; I may say nearly all of the live stock brought to this market are so handled for a commission by the members of the Exchange. What I buy as a speculator and what I sell as a speculator, is from or to these commission merchants. What is known as the Traders' Exchange are persons composed of speculators who do about the same kind of business as I do, and they buy all their stuff of commission merchants, members of the Exchange, and sell to commission merchants, members of the Exchange. The commission merchants in buying or selling to the speculators, handle the stock so sold or purchased for others who pay them a commission for services rendered.

Where one undertakes to do a business at the Kansas City Stock Yards of the nature and kind transacted by the commission merchants, that is either buy or sell on commission, he is required to take out a membership and become a member of the Kansas City Live Stock Exchange. In affiant's opinion and from his observation of the methods employed by the

Kansas City Live Stock Exchange, a person, firm or company could not transact the business of a commission merchant at this market without taking out a membership in the Exchange. One of the classes of business done by the commission merchants is the purchase of what is called feeders brought to this market for sale to parties in the country who buy for the purpose of taking out to their farms or ranches and feeding the same and preparing the same for market by putting on more flesh. Affiant, as a speculator, is not permitted to trade in that kind of live stock. If affiant should undertake to buy feeders and to sell them to the countryman for shipment out of this market for the purpose of feeding, the members of the Exchange would boycott affiant. That
257 is done in this way: My purchases would be from commission men, members of the exchange. Not being a member of the Traders' Exchange, the speculators known as the Traders' Exchange, numbering now between one and two hundred would make complaint to the Kansas City Live Stock Exchange, and such complaint would cause the members of the Exchange from whom I buy to quit selling to me, and in that way would shut me out of the business. The same works the other way in a man trying to do a commission business without belonging to the Kansas City Live Stock Exchange. If a man undertakes to sell on commission without taking out a membership in the Exchange, complaint is made to the Kansas City Live Stock Exchange and the members of said exchange influence one another and influence the members of the Traders' Exchange not to deal with them, to quit buying from and selling to them, and in that way they are shut out of business. I know it is considered against the rules of the Kansas City Live Stock Exchange to permit any one to do a commission business at this market without their being members of the Kansas City Live Stock Exchange. The large number belonging to the exchanges through their combined influence exercise a great power in preventing a person or firm in doing business here whom they don't want to do business. One of the methods of giving directions and notice to the members of the Exchange and others that a person is trading in violation of the rules or is doing a commission business without belonging to the Exchange is by posting up notices on the bulletin boards. These bulletin boards are put up in conspicuous places in the halls of the Exchange building. Members and other traders at this market seeing such notices posted up understand that no trading is to be done with such posted person or firm, while the Exchange is against such person trading. They know by such posting that it is the will of the Exchange through its officers and members that such per-

son so posted shall as far as possible be prevented from trading or doing business in that line.

The location of the Exchange building in the stock
258 yards wherein the members of the Exchange all have their offices and the ready access to all parts of the yards and all kinds of business done in the yards [—] that the combined action of the members of the Exchange in carrying out the rules and enforcing obedience to them makes it next to impossible for a person or firm to do a business when the Exchange undertakes to prevent it. Affiant in his experience and observation in the Kansas City Yards has in several instances observed the effect upon the business of persons or firms against whom the Kansas City Live Stock Exchange were directed to prevent their doing business. In each instance affiant knows that the combined effort of the Exchange, when so directed against such person or firm, has been sufficient to materially damage the business or entirely prevent the business of such person or firm antagonized by the Exchange. The mere power of numbers is an important factor, but in talking with members of the exchange affiant knows they consider their agreement to abide by the rules so strong and binding on them that they refuse to do business with such person or firm posted or antagonized by the Exchange, and often go outside to influence others against trading with such person or firm. It seems to be the purpose of the Kansas City Live Stock Exchange to prevent anyone from doing a live stock commission business unless they are willing to become members of the Exchange and agree to all the rules and by-laws whether good or bad. Affiant has named one exception of the firm of Greer, Mills & Co. doing a commission business. In the case of this firm, as affiant understands it, they are doing business under the protection of a restraining order from some court preventing the Exchange from interfering with their business.

The pens for yarding cattle and feeding and watering same and for taking care of the same while they are waiting for sale are located on the state line between Kansas and Missouri, part being in one state and part in the other. In affiant's business it is almost an every-day experience for affiant to
purchase cattle that are located in pens in Kansas and
259 that are driven over the line and put in pens in Missouri before the transaction is entirely closed, and also the other way where purchases are made in pens that are located in Missouri, and during the negotiations and it is necessary to the closing of the transaction, they are shifted to pens in the State of Kansas. The location of the yards, pens,

tracks, scales, and chutes for loading and unloading in these yards are such that in the ordinary way of handling the cattle in the dealings of the same, and the purchase and the sale of the same a part of the transaction occurs in one state and a part in the other, and it would be difficult to tell in all cases what part was to be done in one state and what part in the other in the completion of the sale of the live stock. This does not arise from any intention or purpose of shifting from one state to the other, but is made necessary on account of the locality of the yards and the way all the different facilities for handling the stock have been constructed and placed. The same may be said about the money transactions in paying for cattle or live stock. Part is done in one state and part in another. No attention is paid to the state line and we do not know any difference in the transaction of business between one state and the other.

Affiant has often read notices posted up on the bulletin boards in the Exchange building wherein the attention of the members of the Exchange [were] called to the rules prohibiting trade with the person or firm named in such posted notice and from the interpretation given by the members themselves knows that it is in that way [—] give notice to members and others that the rules require them not to trade or do business with them.

Affiant's partner is a member of the Traders' Exchange, and some months ago, affiant's partner told affiant that the Traders' Exchange to which he belonged had given him notice not
trade with Greer, Mills & Co. and the reason for it was
260 that they had been posted for violating the rules about
commission charges. It is through such methods that the Exchange make their antagonism effective in boycotting and ostracising a person or firm who is not a member or who being a member is suspended. JAS. PLUMMER.

Subscribed in my presence and sworn to before me this 2nd day of March, 1897.

[Seal] JENNIE M. GOODWIN,
Notary Public.

My commission expires March 24th, 1900.

261 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

Wallace L. Morris being of lawful age and first duly sworn, deposes and says: My business is in the Exchange building

at the Kansas City Stock Yards. I do a great deal of collecting for one commission house located in this building, and collections in the building for other parties in the building, and am also a stenographer and do shorthand work for various commission houses in the Exchange building. I am familiar with the methods of doing the business of collections and payments by checks and drafts in payment of live stock purchased and sold at this market. The state line runs through the building and the offices of the different commission firms and houses are on both sides of the state line. About three-fourths of the offices of the commission houses are on the Kansas side of the state line, and about one-fourth on the Missouri side. In the payment or money transactions concerning the closing of a purchase or sale of any transaction including a deal for live stock, the title order is made out by the commission house making the sale. This consists of a ticket addressed to the Stock Yards Company directing them to deliver to the purchaser whose name is written in the order, and to whose account the delivery is made, and whose account they are sold for, and giving the number of block and pen in which the cattle are situated, and the date. This is signed by the commission merchant making the sale, and is delivered to the commission merchant or party making the
262 purchase. It takes the delivery of this order to pass the title of the live stock. When this order is delivered the title passes. It is the custom and ordinary every-day practice for the commission merchant situated on one side of the state line to issue such sale order from his office and send it to the office of the commission merchant or party making the purchase in the other state and there receive the check or payment for the same, making it necessary in the closing of the transaction to do business on both sides of the state line, before a sale is completed. What I have said about this written title order to the Stock Yards Company does not apply to the packing companies, as they have what is known as an open order to drive stock from the yards and who protect the stock yards by a bond, as I understand it. The scale ticket for cattle weighed up from commission firms to packing houses go through the bank the same as a check after the commission firm delivers a ticket or title order to the stock yards company transferring the ownership of the cattle or stock to the packing firm purchasing same. Upon receipt of the transfer ticket the yard company stamp across the face of scale ticket the words "Order Received" and the date. This is necessary before the bank will accept the scale ticket for collection. As the packing houses and commission houses are located on both sides of the state line and all the details of making a sale or purchase including the weighing, delivery

and payment, require certain things to be done by the commission man, the packing company, and the stock yards company, and a part of such transactions being done on one side of the state line and a part on the other, very few if any transactions either in buying or selling live stock are entire in either state, but do require some part of the business to be done in both states.

WALLACE L. MORRIS.

Subscribed in my presence, and sworn to before me this 3rd day of March, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28th, 1898.

263 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

J. B. Harrelson being of lawful age and duly sworn deposes and says: I live at Belton, Mo., and have lived there all my life. My business is farming and feeding cattle, that is, growing or producing and feeding cattle and shipping same to market. I have been in that business for more than twenty years. I feed and ship annually from 600 to 1000 head and have been doing so for the past two or three years. Prior to that I did not ship quite so many. I have shipped my cattle to this market at Kansas City for the most part during the last three or four years. I used to ship, formerly, to St. Louis and to Buffalo, New York. I am familiar with the methods and agencies for handling cattle at the Kansas City Stock Yards, when shipped to those yards for sale. I know there is such an organization as the Kansas City Live Stock Exchange. It is composed for the most part of live stock commission merchants, whose business is at the Kansas City yards, to sell and buy for others, live stock, and charge a commission for their services in buying and selling. I know in all my shipments that I have had to employ the services of commission men to handle my stock in the yards both in buying feeders at the stock yards and in selling my cattle after they were prepared for slaughter or shipment. When shipping to this market I always consign the shipment from my station at Belton to a commission firm at the stock exchange direct, and such commission firm receive, look after yarding and care of the stock in the yards, and find purchasers for the same,

and for which they charge a commission of 50 cents per
264 head. If I ship my cattle to this market consigned to myself, and come here with them to handle them for myself, and save the commission, and made a practice of doing that I am satisfied I would not obtain the fair market price. I would be ignored by the buyers under the influence of the combined membership of the exchange, as I had not patronized the commission men in the payment of their 50c. per head. The object of the commission man being to get this 50c. per head for selling, and the object of the combination of all the commission men being to enforce the regulations requiring the payment of fixed commission, I never would be able to handle my own stock in selling the same at this market and get fair play and the market price. I know this from my experience and observation in shipping to this market, and in my experience in dealing with the commission men here. I have given this matter a good deal of thought and consideration and I believe it would be wise if the by-laws were annulled, so that the feeder and shipper could come to this market and be free to make such an agreement with the commission merchant as they mutually agree for commissions without the commission men being subject to the by-laws of the exchange, whether the price agreed upon be 10 cents or 50c. per head, and not make him subject to penalties and expulsion from the exchange for having agreed upon such price for commissions as he saw fit to take for his services. I believe there should be no restrictions placed in this market that would prohibit the feeder and shipper from making a private agreement either in the purchase or sale of his stock. Under the business at it is now done and the methods for handling cattle here as they now exist under the organization of the Kansas City Live Stock Exchange and their relation to the packers and scalpers, no feeder or shipper can get along at this market without paying a commission of 50 cents a head for either selling stock shipped here for sale or for buying the feeders taken to the country to fatten."

J. B. HARRELSON.

Subscribed in my presence and sworn to before me this 3d day of Mch., 1897.

[Seal] JENNIE M. GOODWIN,
Notary Pub.

My commission expires March 24th, 1900.

265 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT.

The United States, Plaintiff,
vs.
Henry Hopkins et al., Defendants.

Jennie M. Goodwin, being duly sworn, deposes and says: That some time in August, 1896, she commenced doing business in the Live Stock Exchange at the Kansas City Stock yards as a commission merchant to buy and sell live stock for others on commission. Very soon after she had commenced such business as a commission merchant affiant was notified by the secretary of the Kansas City Live Stock Exchange that she must take out a membership or quit doing business as a commission merchant at the Kansas City Stock Yards. What I have stated was the purport of the notice given affiant. Affiant has made search for the letter that contained such notice from the secretary, but has been unable to find the same. That letter has been mislaid or lost. Affiant, however, remembers that the purport of it was that she could not continue to do business as a commission merchant without taking out a membership in the exchange.

On receiving such notice affiant made an application for membership in the exchange accompanied with the payment of a $25.00 fee required with the application. On September 10th, 1895, after the notice to affiant as above stated, and after she had made application for membership, she received a notice by letter from the secretary that her application had been favorably considered, a copy of which letter is as follows:

Sept. 10, 1895.

Miss Jennie M. Goodwin, City.

Madame: At a regular adjourned meeting of the board of directors of this exchange, held yesterday, your appli-
266 cation for a membership in this exchange was favorably considered. Respectfully yours,

R. P. WOODBURY, Secretary.

At the time this letter was received by affiant, September 10th, she was not then prepared with the money to pay for a membership, the price of which at that time was $1000, consequently, some delay occurred, and she was waited upon by some of the members of the board of directors of the exchange, who inquired of her when she was going to take the membership, and stating to her that she had better obtain the membership. Affiant still not being prepared to pay for a mem-

bership, the board of directors on the 4th day of November, or about that time, at a regular meeting of the board of directors, called affiant in the directors' office, and made inquiries of affiant as to when she could take out the membership, and stating to affiant that they had been very [very] lenient towards her, and that she had better take out a membership right away. Affiant answered that she would like to have them give her such time as would enable her through her business to obtain the money and get the membership; and affiant thinks it was on the same day or the 4th day of November that the board instructed the secretary to notify affiant that the time for her obtaining the certificate of membership was extended until January 1, 1896, and the secretary on November 5, gave the notice to affiant by letter, a copy of which is as follows:

Nov. 5th, 1895.

Miss Jennie M. Goodwin, City.

Dear Miss: At a regular meeting of the board of directors of this exchange held yesterday afternoon, I was instructed to notify you that the time for your obtaining a certificate of membership in this exchange was extended until January 1, 1896.

Respectfully yours,

R. P. WODBURY, Sec.

(Order of the board of directors.)

Affiant still being unable to pay the money, some of affiant's friends had a special meeting called of the board of directors and stockholders of the exchange, more properly speak-
267 ing, members of the exchange, as a collective body, to consider the question of issuing to affiant a certificate of membership as a gratuity or to make a gift of the same.

Affiant heard of the purpose of calling such meeting, and also of expressions from some members of the exchange that they were opposed to the issue of a membership without its being paid for, and also feeling a delicacy about accepting a certificate on such terms, and preferring to wait until such time as she could obtain a membership in the regular way by paying for the same as others did, affiant wrote a letter to the secretary to be read at the meeting thanking the members who had taken the interest in her and who had been instrumental in having the meeting called, but declining to accept the membership on such terms. The meeting, as she understands, was adjourned without any further action being taken. That was some time in December, 1895. After the first of January, 1896, and after the expiration of the time given affiant to obtain a membership, affiant was reminded either by letter or by the secretary or some of the officers of the exchange telling her that she must procure a membership, and

there would be no further extension of time given her. I knew that if I did not take out a membership the members would refuse to buy from me and I would [loose] my business. They did not tell me in so many words that I would have to quit business, but I knew that was what they meant and they would have all the members refuse to buy from me, and that I could not, as a woman, single-handed and alone, afford to get the combined exchange against me. I therefore soon after the first of January 1896, quit the business of live stock commission merchant, and have since that date had an office in the exchange building as a stenographer and notary public.

At the time I quit business as commission merchant there was some suit pending in the courts that I thought would
268 determine the question of whether one could do an independent commission business at the Kansas City Stock Yards without becoming a member of the exchange, and I at that time thought if the right was established for one to do a live stock commission business without having to be a member of the exchange at this market I would resume business the following June, as I supposed the controversy would be settled by that time. It has not been settled yet, and the only commission merchants that I know of doing business at this market without being members of the exchange is a firm by the name of Greer, Mills & Co., and I understand that they have restraining orders of the courts to enable them to do business. As I did not have any money for litigation and could not afford to antagonize the exchange or to carry on a legal controversy in the courts I have been waiting and carrying on the other business I have mentioned, stenographer and notary public, as a means of livelihood.

I would add further that during the time I was carrying on a commission business in the sale or purchase of live stock on commission I was having a very satisfactory business, and making some money. I never had any trouble with any of my patrons in the country or elsewhere and they never found any fault with me, nor did they have any trouble about remittances or make complaints of any kind. I did not discover but what I was transacting a business as satisfactory to my patrons as well as to myself as any of the gentlemen engaged in the same business at the stock yards.

JENNIE M. GOODWIN.

Subscribed in my presence, and sworn to before me this 2nd day of March, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28th, 1898.

269 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

J. F. Chapin being of lawful age and first duly sworn deposes and says: I live at Kansas City, Mo., and am now a cattle buyer and trader at the Kansas City Stock Yards. I was at one time a member of the Kansas City Live Stock Exchange. I sold out my membership about three years ago, and am not now a member of the Live Stock Exchange. I am a member of what is known as the Traders' Exchange, composed of something more than one hundred men whose business is to buy and sell on their own account and for their own use, live stock at this market. They buy and sell on speculation. They do not do the business of commission merchants of buying and selling for others for a compensation for services rendered. I have been doing business in one capacity or another at the Kansas City Stock Yards for about twenty-four years. I am familiar with the methods of doing business by the members of the Kansas City Live Stock Exchange, and with the objects and purposes of the organization itself. It is the purpose of the exchange to control the business of live stock commission merchants. That is to say, to compel all persons who do a business at this market on commission to belong to the Exchange by taking out certificates of membership therein, and to regulate the method of their doing business by fixed commission charges, and in other matters. Under the articles of association, rules and By-Laws of the Exchange and the interpretation placed thereon by members of the exchange, and the methods and customs of doing business here, it is ut-
270 terly impossible for any person, firm or corporation to do a live stock commission business at this market without taking out membership in the Exchange. In case a person, firm or corporation undertakes to do a commission business at this market without taking out a certificate of membership in the Exchange, the members of the exchange decline to do business with him, and their names are posted on the bulletin boards in the exchange building, and when so posted the members under the rules, have to refuse to transact any business with the person so posted. I have seen from time to time posters on the bulletin boards giving the names of parties so posted. From my long experience here at the stock yards I know it would be useless for a man to come here and

engage in the commission business without being a member of the Kansas City Live Stock Exchange.

The yards, pens and facilities for handling and selling live stock at this market are situated on both sides of the state line between Kansas and Missouri. It may happen and frequently does happen that in the sale of any one bunch or car load of cattle, part of the business connected with such sale would be on both sides of the state line; the cattle may be purchased in pens on the Kansas side and before the transaction is completed by weighing and payment, the cattle be transferred into pens and weighed over scales on the Missouri side, and the reverse often happens, where cattle are purchased on the Missouri side of the line and the transaction completed by payment on the [Missouri] side. For convenience in handling in pens, and in separating one bunch or class of cattle from another during the progress of a transaction of a purchase and sale, cattle are driven back and forth from pen to pen on different sides of the line, and part of the same carload of cattle or shipment will be sold both in Missouri and Kansas. A large proportion of the shipments received at the Kansas City stock yards are in the shape of mixed carloads of stock, that is, a car will contain cattle and hogs, or cat-
271 tle and sheep, or cattle and horses, all belonging to the same owner. The cattle will be yarded and sold from pens located on the Missouri side of the line, and the hogs will be sold from pens located on the Kansas side.

J. F. CHAPIN.

Subscribed in my presence, and sworn to before me this 3rd day of March, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28th, 1898.

Indorsed: No. 7402. Affidavit for Defendants. Filed May 31st, 1897. Geo. F. Sharitt, Clerk.

272 In the Circuit Court of the United States for the District of Kansas, Eastern Division.

AFFIDAVIT.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

The State of Kansas,
County of Wyandotte—ss.

James H. Thomson being first duly sworn, deposes and says: That he is a resident of Kansas City, Missouri; that he

is cashier and bookkeeper for the firm of Greer, Mills & Co., a live stock commission firm doing business in the Exchange building at the Stock Yards; that he has been cashier and book-keeper for said firm for about five years last past; that he has been connected in some capacity with the stock yards at Kansas City ever since 1881; that he is familiar with the organization and methods of doing business of the Kansas City Live Stock Exchange; that said Exchange has a membership of about 300, mostly composed of commission merchants who have their offices in the Exchange building located on the State line between Kansas and Missouri. That for some years the Kansas City Live Stock Exchange have tried to control the entire business of buying and selling live stock on commission at the Kansas City stock yards market; that in effect the Exchange has prevented anyone from doing a commission business in the purchase and sale of live stock, who refused to become members of the Exchange. From time to time the Exchange has increased the price charged for membership, and the price now fixed for a certificate of membership is $2500. That by reason of the large number belonging to the Exchange and the small compass of the yards they have been able to influence and control the buying and selling of live stock and prevent anyone from doing such business without being members of the Exchange.

To prevent anyone other than a member of the Exchange from doing business as a commission merchant, various methods are employed. One method is under rule 16 of the by-laws of the exchange when one has refused to join the exchange or having joined, withdraws therefrom, the
273 board of directors pass a resolution directing the Secretary to post on the bulletin boards the resolution or the order of the board naming the member or firm so refusing and directing all the members of the Exchange to act accordingly. This is understood to mean that they shall refuse to do business or trade with such member so posted. The bulletin boards are in the halls and public places of the Exchange building where they are read by all persons coming into the building and who are on the lookout for orders and directions from the board. Other methods are to notify by letter each member of the association, and such other parties as they desire to influence, of the action taken by the board. Another influence brought to bear is the talk and conversation by the members of the Exchange among themselves and others in and about the Exchange building and the yards by which they have a power by reason of their combination and concerted action to intimidate and overawe those who are inclined to trade, but who are influenced not to do so by reason of the

fines and penalties and forfeitures imposed by the rules and by-laws upon the members of the Exchange if they refuse to carry out the resolution or order of the board of directors. Another means of boycotting and preventing the trade of commission men who are not members, is to circulate reports through the country through their solicitors and otherwise, that the person or persons so posted have no right to do business as commission merchants, and that they can not handle the stock of the grower or party having live stock to ship, should they be shipped to such a person or persons so posted. The combined influence of the large numbers directed to the common purpose of preventing such person or persons from trading has been sufficient so far to influencing all persons undertaking to trade at the Kansas City Stock Yards as live stock commission merchants to join said Exchange and agree to the rules, by-laws and regulations, including those that are contrary to public policy prohibited by statute and in restraint of trade.

At this time among all the members of the Kansas City Live Stock Exchange, or rather I mean among all the persons, firms or corporations that are doing business as live stock commission merchants at the Kansas City stock yards, the only persons or firms still doing business as such commission
274 merchants who are not members of the Exchange is the firm of Greer, Mills & Co. Affiant testifies from his own knowledge of the business of that firm that it is by and through the restraining order of the Court of Common Pleas of Wyandotte, Kansas that enables the firm of Greer, Mills & Co. to continue business at this market. That affiant was with the said firm of Greer, Mills & Co. during all the time of their trouble and litigation with the Kansas City Live Stock Exchange that said firm of Greer, Mills & Co. were at the time [of] the affiant was employed by said firm members of the Kansas City Live Stock Exchange. That the trouble commenced between that firm and the Exchange about October, 1895 over a fine imposed by the Exchange on a pretended charge that some salesman or employee of the firm had given back or rebated some small part of a commission in two transactions amounting in the aggregate to about six dollars of the commission so rebated, and for which the Exchange proceeded to fine the firm of Greer, Mills & Co. in the sum of one thousand dollars and threatened to suspend them from all rights of membership until such fine was paid. That before the order of the board of directors was made suspending said firm as a means of collecting said fine a restaining order was obtained from the District Court of Wyandotte County, prohibiting such suspension and restoring the membership, rights and privileges of said firm until the further hearing

by said court. That during the period that such restraining order was in force the members of said Exchange, the packing houses and others continued to deal with the said firm of Greer, Mills & Co. and their trade went on about as usual. On the hearing of said application for a temporary injunction the District Court of Wyandotte County denied the injunction to said firm on the ground of their contractual relation and that they could not be heard in a court of equity to complain as long as they belonged to and were members of said Exchange. Immediately after said restraining order was dissolved by said court a large number of the members of said Exchange by concerted action insisted that Greer, Mills & Co. had no rights to trade as commission merchants and used their influence in various ways to prevent the said firm of Greer, Mills & Co. from carrying on the business of commission merchants. They made this purpose effective through
275 the combined effort of the whole membership under the direction of the President, Secretary and board of directors, and affiant knows from his taking care of each transaction that the trade of Greer, Mills & Co. was injuriously affected during the period of time between the dissolving the said restraining order and the time when the record in the case was filed in the court of appeals for the state of Kansas, Eastern Division, Northern Department, and a temporary restraining order obtained there until the case could be heard there on review. Immediately upon serving the restraining order issued by the Court of Appeals the boycott or influences used to prevent the firm of Greer, Mills & Co. trading was lifted and their trade continued as usual, until the final decision of the Court of Appeals, which decision sustained the judgment already made by the District Court of Wyandotte County on the ground that complainants were members of the Exchange and that the main purpose of the Exchange was the enforcement of rule 9, prohibited by the Kansas statute, and to grant them relief would be to continue them members of a combination in violation of the criminal statute of the state of Kansas, and to enable them to continue a violation of law that prohibited them being members of such an illegal body. This decision of the order of the court at that time made dissolved the restraining order that had been issued by the Court of Appeals and again the combined influence was brought to bear on preventing the firm of Greer, Mills & Co. from doing any business. Newspaper articles were published containing the result of the suit, the solicitors for the various commission houses traveling through the country spread broadcast the news that Greer, Mills & Co. had been suspended, had lost their suit with the Exchange, and could not do business at the Stock Yards, and growers and feeders of

cattle who were patrons of that firm were intimidated from shipping to them for fear they could not sell their live stock shipped to the Kansas City market by reason of the influence and combined effort of the Kansas City [Life] Stock Exchange. Members of the Exchange and all persons they could influence, including the packing houses at the Kansas City market refused to trade with or purchase any stuff from Greer, Mills & Co. They were during this period of time unable to sell a large number of car loads of hogs and cattle that were
276 shipped to them at the Kansas City market. The cattle had to be re-shipped to Chicago at a loss to the owners of additional freight, shrinkage and extra expense and liable to a change in the market price. The hogs had to be turned over to other commission men to sell at a loss to Greer, Mills & Co. of their commissions. Money had been advanced on hogs and the firm had to lay out of that until Judge Philips of the United States District Court of the Western District of Missouri had issued a restraining order mandatory in its nature restoring that firm to its privileges during the pendency of the suit in that court. The officers of the Exchange prohibited the members of the Exchange to whom both cattle and hogs were turned over to sell, from recognizing the firm of Greer, Mills & Co. in the transactions and compelled the commission firms to treat direct with the shippers of the hogs and cattle in their remittances of the proceeds of sales.

A suit being commenced in the United States Circuit Court for the Western District of Missouri, Judge Philips issued a restraining order of such a nature as to prohibit interference with the business of that firm and restoring them to rights and privileges of members until the further hearing. During the period that such restraining order was in force the firm of Greer, Mills & Co. were again able to do business and the members of the Exchange including the packing houses purchased live stock from them, but such restraining order was finally dissolved and the firm denied an injunction on the ground of their membership and contractual relation holding that while members of the Exchange they could not be heard in a court of equity without bringing into court all the parties that were members of the Exchange, and as some of the members lived in Kansas, and could not be brought within the jurisdiction of the court, the bill would have to be dismissed for want of jurisdiction. A suit was then immediately brought in the court of Common Pleas of Wyandotte, Kansas for injunction prohibiting the Exchange and the members thereof from interfering with the business of Greer, Mills & Co. or refusing to trade with them, and from influencing others from trading with them and commanding them to permit

Greer, Mills & Co. to do a commission business at said market without hindrance, and such order is still in force and
277 under the protection of same the said firm of Greer, Mills & Co. are now doing business, but not to the extent as before as the good will of the Exchange is against them and certain influences being exerted at all times both in the country and in the stock yards to annoy them and detract from their business as much as possible.

That affiant knows without the protection of the restraining orders now in force from the court of Common Pleas of Wyandotte County the firm of Greer, Mills & Co. would be prevented from doing a commission business and from transacting the business of sale and purchase and sale of live stock at the open market at Kansas City.

Through the custom practiced and methods of doing business by the Kansas City Live Stock Exchange, they have control of the sale of hogs so as to prevent any sale of hogs being made, except by being docked at the time they are weighed. By dockage is meant that a certain amount of weight is deducted for piggy sows or stags and rough hogs. The stock Yards Co. has given the control of the docking of hogs to the Live Stock Commission Exchange so that all hogs that are sold, immediately after the weighing and as they go off from the scales are inspected by what is termed dockers, employed by the Kansas City Live Stock Exchange, and such dockers inspect and determine arbitrarily how much shall be deducted for [biggy] sows, stags and rough hogs. No sales of hogs are made without going through that process. By this custom or device the sale of hogs to that extent is under the management and control of the Kansas City Live Stock Exchange. If a commission merchant is out with the Exchange or is trying to do business in the sale of hogs and are not members of the Exchange, the Live Stock Exchange can prevent their selling hogs by refusing to let their hogs be docked, and in the case of Greer, Mills & Co., while no restraining order was in force the dockers reported that they were instructed not to dock the hogs handled or sold by Greer, Mills & Co. It is the custom and practice to have the hogs docked before the packing houses will purchase same, or in other words the packing houses located at Kansas City stand by and acquiesce in the system of dockage created by the Kansas City Live Stock Exchange, and before purchasing any hogs, it is expected that they will be docked before they will purchase. Nearly
278 all the hogs sold at this market are purchased by the local packers. The local packers are all connected with the Exchange through certain representatives of the Packing Houses being members of the Kansas City Live Stock Ex-

change, and through such representative membership and through the influence of the large numbers belonging to the Exchange are influenced by the will and direction of the Exchange in dealing with or not dealing with such parties, commission houses and firms as the Exchange do business with or are members thereof. During the period of time that Greer, Mills & Co. were not protected by restraining orders of the courts the local packers were influenced by the Exchange not to trade with the firm of Greer, Mills & Co., or to buy their hogs or cattle. Of the cattle sold at the Kansas City market, nearly all the fat cattle are sold to the local packers for slaughter here or at their packing houses elsewhere. The firm of Schwartzschild & Sulzberger may export some of the fat cattle that they buy.

The influence of the combined membership of the Kansas City Live Stock Exchange according to their custom and practice has been and is such as to prevent free competition in the purchase and sale of live stock by commission men unless such commission men, firm or commission house becomes a member of the Exchange. They not only prevent such competition among the members of the Exchange, but through the Exchange influence local packers and other traders and the growers and feeders and farmers in the country who have stock to ship to this market. By this influence and combined and concerted action they are able to ruin the business of any one person, firm or house that undertakes to do a business and compete on commissions, charged for selling or buying, or who employs more than the limited number of solicitors named in the rules, or who send free information to the country of the state of the market, and it is the purpose of rule 9 to prohibit any such competitive business or the charging of less commissions for the sale or the purchase of cattle or hogs or sheep [then] that fixed by the by-laws, or the employment of larger number of men to solicit business than the number fixed by the by-laws, [or the employment of larger number of men to solicit business than the number fixed by the by-laws],
279 or the sending out of free information to the country patrons, farmers, feeders or shippers of the state of the market. That by the mere force of numbers and the influence that each and all can bring to bear, the Exchange so far has been able to prevent persons other than members of the Exchange from trading in this market as commission merchants without their becoming members and agreeing to their rules and by-laws.

In the case of Greer, Mills & Co., after they had surrendered their membership certificates of each and all the members of the firm, and had ceased to be members of the Kansas City

Live Stock Exchange, the Board of Directors passed a resolution and order directed to the Secretary to post the names of Greer, Mills & Co. on the bulletin boards, and directing each and all the members not to do business with them, and from the time of such posting the members of the Exchange exerted their influence with members and others to prevent them from carrying on the business of live stock commission merchants and would continue to do so but for the protection of the courts through restraining orders or injunctions. This is done by influencing parties who purchase cattle or hogs and other live stock at this market from purchasing from them, and by influencing parties in the country from shipping live stock to them.

That the Kansas City Stock Yards consisting of a large area of ground on both sides of the state line between the states of Kansas and Missouri, divided off into pens and traversed by paths, drive-ways, fences, railroad tracks, overhead bridges, viaducts, cattle chutes, office buildings and all facilities for the handling, weighing, unloading and reloading onto the cars of live stock are owned by the Kansas City Stock Yards Co. That the Kansas City Stock Yards Co. is of a public nature, invested with a public interest, clothed by law [in] a corporate capacity, having charge of all the necessary facilities for transacting the business of the Exchange, sale, and conversion into food products of the cattle, hogs and sheep that come from sundry states and territories by shipment over railroad to a public market. That Kansas City, through the facilities furnished by said Stock Yards Co., and through the large slaughter and consumption of meat, has become second in the United States of the markets of its kind; that said
280 Kansas City Stock Yards Co. has rented office rooms to the members of the Kansas City Live Stock Exchange, and the Kansas City Live Stock Exchange, and all its members thereof, are tenants in the Exchange building owned by said stock yards company; that the Kansas City Live Stock Exchange have no interest in the ownership of the Exchange building, pens, tracks, or the facilities for taking care of and handling live stock shipped to said market. That said Kansas City Stock Yard Co. invested with its public interest in connection with said market has no right to aid, or assist said Exchange in preventing, hindering or annoying any person, firm or corporation from doing business as live stock commission merchants at said market and in said yards, but it is the duty of said stock yards company to see to it that all have equal facilities, rights and privileges who desire to do such business at said market.

By reason of the complicated character of the sale or purchase of live stock, as the business has grown up at said market, it is difficult for a person not acquainted with the yards and the methods of doing business to go through with all the steps necessary from the time of the arrival of a car of stock from the country into the yards, the unloading, putting in pens, feeding, watering, weighing, and delivery to the purchaser and the closing of the money transaction of settling for same to get through without the aid of someone experienced in the methods of doing business at the stock yards. For that reason, very few, if any, farmers, stock growers or feeders, who own the cattle in the country, and ship them to this market for sale, undertake to sell their own cattle or live stock at this market, but employ live stock commission merchants, men located at the stock yards, who are experienced in all the details and methods of doing business at the yards to assist them in handling their stuff as it arrives at the market and selling it for them. Out of this necessity has grown up the business of the live stock commission merchant, and for this service a commission is charged which includes the sale or purchase, as the farmer may desire, including the taking care of the stock, or seeing to their care, and handling, from the time of their arrival at the stock yards in cars to the closing of the
281 transaction by payment of the purchase price, and the proceeds thereof delivered to the owner or shipper. There is nothing in the nature of the business of a live stock commission merchant that makes it necessary for such commission merchant or firm or house to belong to a combination or exchange. The only object for a combination of membership of men doing a commission business is to prevent competition in the charges to be made or to effect some other result which only could be done by combination of numbers and their concerted action, which would not be effected if there was entire free competition.

It has been the custom and practice and is now the custom and practice for any man in the country who has live stock to ship to the Kansas City market to way-bill them at the place of loading on cars for shipment in the country to a commission house or firm at the Kansas City stock yards in the Exchange building, and on the arrival at the Kansas City Stock Yards of such car of live stock, the commission man or firm to whom they are billed or consigned to take charge of them by sending men to the train and drive them or cause them to be driven into the yards and be put in proper pens, and see that they have water and feed, which water and feed is furnished by the Kansas City Stock Yards Co., and the feed and yardage charge is charged to the commission firm to whom the stock is

billed or consigned. The commission firm or house then carry out the directions of the shipper in the sale of the same, and the disposition of the proceeds. By reason of their experience and acquaintance at the market the commission firm or their employees know who at this market are buyers for the class of cattle or live stock so shipped to them, and take such buyers or their representatives to the pen to examine the stock and purchase the same. When a bid is made or a bargain agreed upon the commission house or their employees attend to seeing that the stock is weighed and the purchase money paid in due form and remittance made to the owner of the stock shipped.

Outside of the rules and by-laws of the Kansas City Exchange the owner of the live stock so shipped and the commission man or house would have the right to make such bargain as they pleased for the charges for the services rendered as above stated, for selling, and all the members of the Live Stock Exchange would be in competition with one an-
282 other and the commissions charged would have its influence in obtaining trade and affect the amount paid to the owner and shipper of the proceeds of his live stock. Before the formation of said Exchange and the adoption of said rules, the commissions charged were about one-half of what they have been since.

The live stock that is shipped to this market are grown and raised in different states and territories, including Missouri, Kansas, Arkansas, Texas, Louisiana, Indian Territory, Oklahoma, New Mexico, Arizona, Colorado, Idaho, Wyoming, Montana, Nebraska, the two Dakotas, Iowa and others. When shipped from such territories into the state of Missouri, or the stock yards situated in both Kansas and Missouri, they are sold for slaughter or consumption for use as a food product into other states than those of the original shipment, and become mingled with and a part of the property of other states and territories than the states and territories in which the same originated, and from which the original shipment began.

It is often the practice and the custom when a shipment is made at any railroad station in any state or territory, for the owner or shipper when the live stock is loaded into cars and a bill of lading made to consign the same to a commission house at the Kansas City market, and then go to a bank located at where the shipment originates and draw a draft on the commission house for some portion or all of the market value of the same. This draft is made on the commission house to which the live stock is shipped and taken to a local bank at the place of shipment and money drawn on same or the draft cashed.

The local bank then sends such draft with the bill of lading attached to its corresponding bank at Kansas City for collection. The bank at Kansas City then presents the same to the commission house for payment, and the commission house paying the draft in this way advances money on the cattle or live stock before receiving, or before the arrival of the live stock so shipped into their possession in the yards. Any interference or prevention of their selling such live stock at the Kansas City market would entail a loss or hazard in trans-
283 acting the business. Such interference or prevention of sale would stop such interstate shipment and sale from being carried on in the ordinary methods that customs and usages of the country have established.

It is the custom and practice of a large number of commission houses to make loans to their patrons in the country who are growers or feeders of stock to enable them to prepare their cattle or hogs or sheep for shipment to the Kansas City market. Such loans are made throughout the entire territory above named. In making a loan on the live stock it is usual to take a mortgage with the agreement that such stock as are included in the mortgage as security are to be shipped to the commission man making the loan and sold on the Kansas City market, or Chicago, or St. Louis, and the proceeds applied to the payment of the loan. A large amount of money amounting to millions of dollars are so loaned in the territory tributary to the Kansas City market by different commission men doing business at the Kansas City stock yards. It is the custom and practice to discount a large amount of this paper at the local banks of Kansas City by the commission men, the commission houses or firms guaranteeing the paper. The security relied upon for the payment of such paper being the live stock so mortgaged, including the agreement for the shipment and delivery at the Kansas City Stock Yards for sale when such live stock has been prepared ready for market, of the application of the proceeds of the sale to payment of the loan. Any commission firm or house that was prevented from selling such live stock so mortgaged at the Kansas City market by reason of any combination, boycott or interference with their trade, would jeopardize such security, and might entail loss of such security and certainly an impairment of the same. The place of the loan is the locality where the cattle are raised and fed and the origin of the shipment. The place of settlement of the loan is the place or market where the cattle are sold, being in most cases a different state from that in which the cattle are raised and from which they are shipped.

A large percentage of the cattle handled and sold at the Kansas City Stock Yards market by the commission merchants

doing business at said market are so incumbered by mortgages thereon executed by the owners of such live stock in the various states and territories where such cattle or live
284 stock is raised and fed. These loans or advances of money enable the owners of the live stock with means to feed and to prepare said live stock for market. The shipment and consignment to the live stock commission merchant at Kansas City who has made such advances enables such commission merchant through the sale thereof to receive possession of the proceeds of sale and to deduct the amount of their loan, and satisfy their lien. From the information that affiant has in his long business experience at the stock yards in Kansas City, it is affiant's belief that fully nine-tenths of the commission merchants doing business at said Kansas City Stock Yards make such advancements of money to the owners of live stock and stock growers in the various western states and territories named, and that the large and growing market at Kansas City is sustained largely through the large sums so advanced by said commission merchants, to the cattle or live stock raisers and growers and feeders of the western states and territories named. Affiant further states that said stock yards at Kansas City afford to the owners and shippers and dealers in cattle and live stock the only available means or place for handling, sale and reshipment of cattle within several hundred miles to the north, south and east of Kansas City, and for several thousand miles to the west thereof, and that by reason of such market the Kansas City Stock Yards is the only available public market for the purchase and sale of cattle and other live stock, and for the exchange of interstate traffic therein for a very large area of territory.

Affiant further says that it is the daily custom and practice of the defendants' commission men aforesaid to sell live stock in the State of Missouri, which at the time of said sale are located at said stock yards, in pens, in the State of Kansas, and also to sell live stock in the State of Kansas, which at the time of such sale are located in pens in the State of Missouri. It is also the daily custom and practice of the commission houses, defendants herein, to make deliveries of stock that are sold in the State of Kansas on the Kansas side of the state line to purchasers in the State of Missouri, and to make deliveries of live stock from the State of Missouri to purchasers in the State of Kansas.

285 That the yards, pens and facilities for handling, weighing sale and delivery of the sale of live stock being situated on both sides of the state line between the states of Kansas and Missouri; and the office building being situated on the state line, and the offices of some of the com-

mission merchants being in one state and some in the other state, the business at said stock yards is done on both sides of the state line between Kansas and Missouri, and by reason of the fact that transactions begin in one state and are consummated in another, and that cattle and other live stock in the course of being received, sold and delivered at the stock yards, first on one side of the line and then on the other, it is difficult or impossible in most cases to say what business transaction or transactions or what part thereof are begun and consummated in the state of Missouri and which are begun and consummated in the state of Kansas.

A part of the packing houses that slaughter cattle at the local market for food product are located in Missouri and part in Kansas. The quarantine pens into which all southern cattle that come from the quarantine districts at the south during the period of quarantine restriction as established by the Bureau of Animal Industry in the United States Department of Agriculture are located across the Kaw River in the state of Kansas in the Kansas City Stock Yards. Under the quarantine regulations such cattle originating within the territory so quarantined against are shipped to this market at Kansas City only for the purpose of immediate slaughter, and have to be sold to the local packers for slaughter; and such as are purchased by the packing houses located in Missouri, [necessaitates] an interstate delivery and immediate change into a food product that assimilates and becomes the property of others in another state.

That all cattle that are shipped to this market for sale during the quarantine period that do not originate within the quarantine district, and that are permitted to be shipped into the country as feeders or for other purposes when so shipped out of this market have to have what is called a health bill attached to the bill of lading of the car as it goes out of the yards. This health bill consists of a certificate issued
286 by the commission man making the sale that certifies that to the best of their knowledge the stock so shipped are free from contagious or infectious diseases, and certifying that such commission man or house have no knowledge of such disease at or near the station from which such cattle were shipped to this market. After the issuing of such health bill before the cattle can be shipped out of the stock yards at Kansas City, such health bill has to be stamped by the Government Inspector located here as the evidence that such cattle have been inspected and are free from disease, and the permit issued by such Government Inspector giving consent to their being [taking] out of the yards for shipment to the country.

That of the live stock originating in other states and territories, shipped to the Kansas City Live Stock market, a very large proportion is shipped to Kansas City market for sale, for slaughter and shipment to other states and to foreign markets; that seventy-five per cent of the fat cattle sold at the Kansas City Stock yards is purchased by the packing houses located in Kansas and Missouri as above stated; that a large proportion—probably ninety per cent—of the live stock purchased by said packing houses, and slaughtered by them, is purchased and slaughtered for shipment to points outside of the state in which the packing house is situated, and to foreign countries.

That a large number of cattle received at the Kansas City stock yards from other states and territories are purchased by packing houses for shipment, alive, to foreign countries.

This inspection and regulation concerning the health of the cattle so shipped, is under the control and direction of the Bureau of Animal Industry, in the Agricultural Department of the United States Government.

JAMES H. THOMSON.

Subscribed to in my presence and sworn to before me this 26th day of February, 1897.

[Seal] JACOB G. WINN,
Notary Public.

My commission expires Dec. 8, 1900.

287 In the Circuit Court of the United States for the District of Kansas. First Division.

The United States of America, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Kansas,
County of Wyandotte—ss.

Scott R. Kennedy being duly sworn, deposes and says: That he has been doing business at the Kansas City Stock Yards for the past five or six years last past. That he is what is known as a speculator in business at the stock yards during the last year; that he has never been a member of the Kansas City Live Stock Exchange and has never carried on what is known as the business of a live stock commission merchant; that affiant is from observation and experience at the Kansas City Yards familiar with the methods of doing business by the Kansas City Live Stock Exchange, an association composed of live stock commission merchants for the most part, some of its members being connected with the packing houses or interested at the Kansas City market in other ways. From affiant's

acquaintance with the different members of the Kansas City Live Stock Exchange and his observation and experience in and about the Kansas City Stock Yards, affiant knows the fact that all of the parties doing business as live stock commission merchants at the Kansas City Stock Yards with the one exception of Greer, Mills & Co. are members of the Kansas City Live Stock Exchange; that it is the purpose of the Kansas City Live Stock Exchange as demonstrated by their practice and custom to influence all persons who do a business at the Kansas City live stock yards to become members of the Exchange, and as far as possible to prevent any firm or person from doing a business at this market as a live stock commission merchant who does not become a member of the Exchange.

The methods employed to prevent any person who is not a member from doing business as a live stock commission
288 merchant vary. One of the methods is to post such person or firm on the bulletin boards of the Exchange informing the other members of the Exchange not to do business with the person so posted. I know of two packing houses who refused to buy from a commission house that was so posted on the bulletin boards and of two commission houses that are members of the Exchange who refused to buy from the same firm that was so posted on the bulletin boards; of course, the talk and conversation in and about the yards between the members of the Exchange and with the members of the Exchange and others has its influence to accomplish any purpose the Exchange desires. They have an influence also in diverting shipments from the country away from the person or firm so posted. There are so many of them they can make a pretty effectual boycott if they try.

SCOTT R. KENNEDY.

Subscribed in my presence, and sworn to before me this 26th day of February, 1897. JAMES RATCLIFFE.

[Seal] Notary Public.

My commission expires March 28, 1898.

Indorsed: The United States vs. Henry Hopkins et al. Affidavit of Scott R. Kennedy.

289 In the Circuit Court of the United States for the District of Kansas. Eastern Division.

The United States, Complainant,

vs.

Henry Hopkins et al., Defendants,

AFFIDAVIT.

The State of Kansas,

County of Wyandotte—ss.

Norman B. Greer, of lawful age, being first duly sworn, on his oath deposes and says: That in November, 1896, he was

the manager, at the Kansas City Stock Yards, for the firm of Greer, Mills & Co., which said firm was doing a commission business in buying and selling live stock at said market, at said time.

That on the 16th day of November, 1896, the affiant, on behalf of Greer, Mills & Co., served on R. P. Woodbury, the Secretary of said Kansas City Live Stock Exchange, a written notice of withdrawal from said Exchange, a copy of said notice being hereto attached, marked "Exhibit A." At the same time he surrendered the certificates of membership of Jefferson B. Greer, Frank O. Mills and Jesse Sherwood, and the same were received by the Secretary of the said Kansas City Live Stock Exchange, and the firm of Greer, Mills & Co. there and at that time ceased to be members of said Exchange by their voluntary withdrawal from the same.

That thereafter, and on the 17th day of November, 1896, notwithstanding the voluntary withdrawal of said firm and their ceasing to be members of said Exchange, the Directors of said Kansas City Live Stock Exchange, through R. P. Woodbury, its Secretary, caused notices to be posted on the bulletin boards in the Exchange Building, at the Kansas City Stock Yards, a copy of which notices is hereto attached marked "Exhibit B" and that said directors and Secretary of said Exchange also served copies of said notices on the commission houses doing business at said Kansas City Stock Yards the purpose of which notice was to enforce and make effective Rule 16 of the Code of By-Laws and stop all business with said firm of Greer, Mills & Co.

That immediately after the posting of said notice con-
290 tained in Exhibit B, the members of said Kansas City Live Stock Exchange refused to deal with said firm of Greer, Mills & Co. and that the packing houses refused to buy their stock from them, and the Exchange dockers refused to dock their hogs, and continued so to do until about the 5th day of December, 1896, when Greer, Mills & Co. obtained a temporary restraining order from the Court of Appeals in Kansas City, Wyandotte County, Kansas. And that between said 17th day of November, 1896, and the 5th day of December, 1896, the said firm of Greer, Mills & Co. were practically shut out of the market at Kansas City, as far as dealing with any packing house or member of the Exchange was concerned. And further affiant saith not. N. B. GREER.

Subscribed in my presence and sworn to before me this 26th day of February A. D. 1897.

My commision expires March 28, 1898.

[Seal] JAMES RATCLIFFE,
Notary Public.

291 To the Kansas City Live Stock Exchange, Kansas City, Kans.:

You are hereby notified that Frank O. Mills, J. E. Greer and Jesse Sherwood, all of Chicago, Illinois, composing the undersigned firm of Greer, Mills & Co. do hereby withdraw from membership in the Kansas City Live Stock Exchange, and do hereby surrender and deliver to you certificates of membership in said Exchange, being Numbers 241, 59-A and 60-A.

You are further notified that the undersigned hereby withdraw their consent formerly given to the "Articles of Association, Rules and By-Laws, and Rules for inspection of hogs of the Kansas City Live Stock Exchange," and to each and every part and section thereof.

GREER, MILLS & CO.

Kansas City, Mo., Nov. 9, '96.

"Exhibit A."

292 Kansas City, Mo., Nov. 17.

My Dear Sir: At a meeting of the Board of Directors of the Kansas City Live Stock Exchange, held this date, the following resolutions were unanimously adopted:

"Resolved, That the withdrawals of Jefferson E. Greer, Frank O. Mills and Jesse Sherwood, composing the firm of Greer, Mills & Co., from membership in the Kansas City Live Stock Exchange, and the surrender of their respective certificates of membership in said Exchange bearing numbers 59-A, 60-A and 241, be and the same are hereby accepted; and

Resolved, That the said acceptance shall be without waiver of, prejudice to, any rights which this Exchange, or the members thereof, may have against the said Greer, Mills & Sherwood, or either of them, by reason of the fines heretofore assessed against them, because of their violation of the rules of this Exchange; nor shall acceptance operate to relieve said Greer, Mills and Sherwood, or either of them, from the liabilities and penalties resulting from, or incident to, said fines, and the non-payment thereof, and their suspension from membership because of said non-payment;

Resolved further, That the Secretary be directed to cancel said certificates, and to erase the names of said Greer, Mills and Sherwood, from the list of the members of this Exchange, and that he notify said parties of this acceptance of their withdrawal and surrender and also that he notify the members of this Exchange of such facts and that said Greer, Mills and Sherwood, composing the firm of Greer, Mills & Co., are no longer entitled to any of the privileges of membership in this Exchange, but stand as suspended therefrom, and also as hav-

ing surrendered the same and every part thereof; and that all members of this Exchange be notified to govern themselves accordingly."

Very respectfully,

"Exhibit B." W. P. WOODBURY, Secretary.

Indorsed: The United States vs. Henry Hopkins et al. Affidavit of Norman B. Greer.

293 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT OF CHAS. HOWARD.

The United States of America, Complainant,
vs.
Henry Hopkins et al., Defendants.

Chas. Howard being first duly sworn, deposes and says: I live in Kansas City, Mo. I was a member of the Kansas City Live Stock Exchange until the first day of February, 1897, at which date I transferred my certificate of membership. Since February 1st, I have been doing business at the Kansas City Live Stock Yards as a trader. Prior to the first day of February of this year I was doing business as a live stock commission merchant at the Kansas City Stock Yards for some four or five years. I am familiar with the methods of doing business by the Kansas City Live Stock Exchange. The Association known as the Kansas City Live Stock Exchange, in the main, control the business of the live stock commission merchants or the sale of live stock at this market on commissions. It is the purpose of the Kansas City Live Stock Exchange to prevent any commission merchant from doing the business of buying and selling on commission on this market unless such commission merchant belongs to the Exchange. If a man or firm try to do a commission business at the Kansas City Stock Yards without taking out memberships in Exhange they use different methods for preventing buyers from purchasing the stuff they have to handle.

Under rule 16 of the Exchange when a person or firm are posted on the bulletin boards that is understood to be a direction from the Exchange to refuse to trade or do business with the member so posted.

CHAS. HOWARD.

Subscribed in my presence, and sworn to before me this 25th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28, 1898.

Indorsed: United States vs. Henry Hopkins et al. Affidavit of Charles Howard.

294

EXHIBIT "A."

Instructions to Inspectors.

United States Department of Agriculture,
Bureau of Animal Industry.

Washington, D. C., Sept. 13, 1893.

To Inspectors of the Bureau of Animal Industry in charge of the inspection of animals slaughtered at abattoirs throughout the United States:

Supplementary to the order of the Secretary of Agriculture, of this date, directing the ante and post-mortem examination of all swine slaughtered at the abattoirs where the Department of Agriculture is carrying on inspection, the following instructions are issued as a guide to inspectors in the condemnation of cattle, sheep, swine, and their carcasses.

All animals found on either ante or post-mortem examination to be affected as follows are to be condemned and the carcasses thereof stamped with the "condemnation" stamp supplied by the Department, and inspectors will see that said carcasses are placed in the rendering tanks of the abattoirs:

(1) Hog cholera.
(2) Swine plague.
(3) Charbon or anthrax.
(4) Malignant epizootic catarrh.
(5) Pyaemia and septicaemia.
(6) Mange or scab in advance stages.
(7) Adanced stages of actinomycosis or lumpy-jaw.
(8) Inflammation of the lungs or of the intestines.
(9) Texas fever.
(10) Extensive or generalized tuberculosis.
(11) Animals in an advanced state of pregnancy or which have recently given birth to young.
(12) Any disease or injury causing elevation of temperature or affecting the system of the animal to a degree which would make the flesh unfit for human food.

Any organ or part of a carcass which is badly bruised or affected by tuberculosis, actinomycosis, abscess, suppurating sore or tapeworm cysts must be condemned.

D. E. SALMON,
Chief of Bureau.

Approved: J. STERLING MORTON, Secretary.

295 Supplementary Regulation for the Inspection of Live Stock and their Products.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., Sept. 13, 1893.

To Inspectors in Charge of Abattoirs under the Regulations of the U. S. Department of Agriculture of March 25, 1891:

You are hereby notified that beginning October 1, 1893, the inspection of all hogs slaughtered at the abattoir which you are in charge of, will be inaugurated.

This inspection will be carried on in accordance with the aforesaid regulations of March 25, 1893, covered from Rule 2 down to and including Rule 12 of said regulations, and will be similar in all respects to the system now in operation applied to the inspection of cattle and sheep. It will include a careful ante-mortem examination of all hogs, as required by Rule 6, and a subsequent post-mortem examination, as required by Rule 7.

The carcasses of all hogs that are to enter into interstate trade, as dressed pork, will be tagged in the same manner as cattle are now marked for identification. The products of hog carcasses which enter into interstate trade will be stamped in the same manner as are the products of cattle.

No microscopic examination will be made of hogs slaughtered for interstate trade, but this examination will be confined to those intended for the export trade and will be carried on as heretofore, and only at abattoirs which export pork products to countries requiring a certificate from this Government to secure the admission of such meats. Hereafter all inspectors issuing certificates for export of pork products which have been [microscopically] examined will enter upon the same the number of each stamp marking the packages for which said export certificate is issued.

All hogs found upon either ante mortem or post-mortem examination to be diseased or, for any reason unfit for human food, will be condemned by the Inspector in charge of
296 the abattoir, who will see that the carcasses of the same are tanked by the owners of the abattoir. In case the owners of the abattoir refuse to tank such carcasses, then the inspector will tag said animals with tags for condemned meat which will be furnished by this Department.

Owners of abattoirs are warned against removing the tags so attached to condemned carcasses and are notified that they will be prosecuted, under Section 4 of the Act of Congress of

March 3, 1891, for any such attempt to tamper with the device for marking condemned animals as prescribed by this regulation.

Accompanying and forming part of this order are directions to inspectors, designating the diseases and conditions which render animals unfit for human food, and for which they shall be condemned by the Inspector.

J. STERLING MORTON, Secretary.

297 [T. F.]

EXHIBIT "B."

Regulations Concerning Cattle Transportation.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., January 27, 1897.

To the Managers and Agents of Railroads and Transportation Companies of the United States, Stockmen, and others:

In accordance with section 7 of the act of Congress approved May 29, 1884, entitled "An act for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of the act of Congress which became a law April 24, 1896, making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1897, you are hereby notified that a contagious and infectious disease known as splenetic, or Southern, fever exists among cattle in the following described area:

All that country lying south, or below, a line beginning at the northwest corner of the State of California; thence east, south, and southeasterly along the boundary line of said State of California to the southeastern corner of said State; thence southerly along the western boundary line of Arizona to the southwest corner of Arizona; thence along the southern boundary lines of Arizona and New Mexico to the southeastern corner of New Mexico; thence northerly along the eastern boundary of New Mexico to the southern line of the State of Colorado; thence along the southern boundary lines of Colorado and Kansas to the southeastern corner of Kansas; thence southerly along the western boundary line of Missouri to the southwestern corner of Missouri; thence easterly along the southern boundary line of Missouri to the Mississippi River; thence northerly along the Mississippi River to the northern boundary line of Tennessee at the southwest corner of Lake County; thence easterly along said northern boundary line to the northeast corner of Henry County; thence in a northerly direction along the boundary of the Tennessee River

to the northwest corner of Stewart County; thence in an easterly direction along the northern boundary of Tennessee to the southwestern corner of Virginia; thence northeasterly along the western boundary line of Virginia to the northernmost point of Virginia; thence southerly along said boundary line to the northeast corner of Virginia where it joins the southeastern corner of Maryland, at the Atlantic Ocean.

Whenever any State or Territory located above or below said quarantine line as above designated, shall duly establish a different quarantine line, and obtain the necessary legislation to enforce said last-mentioned line strictly and
298 completely within the boundaries of said State or Territory, and said last above mentioned line and the measures taken to enforce it are satisfactory to the Secretary of Agriculture, he may, by a special order, temporarily adopt said State or Territorial line.

Said adoption will apply only to that portion of said line specified, and may cease at any time the Secretary may deem it best for the interest involved, and in no instance shall said modification exist longer than the period specified in said special order; and at the expiration of such time said quarantine line shall revert without further order to the line first above described.

Whenever any State or Territory shall establish a quarantine line for above purposes, differently located from the above-described line, and shall obtain by legislation the necessary laws to enforce same completely and strictly, and shall desire a modification of the Federal quarantine line to agree with such state or territorial line, the proper authorities of such State or Territory shall forward to the Secretary of Agriculture a true map or description of such line and a copy of the laws for enforcement of same, duly authenticated and certified.

Such States or Territories as now have a line established as last above mentioned can immediately forward certified copies of said line and laws for the enforcement thereof, and if satisfactory to the Secretary of Agriculture, the same may be adopted at once and the Federal line so modified.

From the 15th day of February to the 15th day of November, inclusive, during each year, no cattle are to be transported from said area south or below said Federal quarantine line above described to any portion of the United States above, north, east, or west of the above-described line, except by rail for immediate slaughter, and when so transported the following regulations must be observed:

1. When any cattle in course of transportation from said area are unloaded above, north, east or west of this line to be fed or watered, the places where said cattle are to be fed or watered shall be set apart and no other cattle shall be admitted thereto.

2. On unloading said cattle at their points of destination, pens, sufficiently isolated, shall be set apart to receive them, and no other cattle shall be admitted to said pens; and the regulations relating to the movement of cattle from said area, prescribed by the cattle sanitary officers of the State where unloaded, shall be carefully observed. The cars that have carried said stock shall be cleansed and disinfected as soon as possible after unloading and before they are again used to transport, store, or shelter animals or merchandise.

3. All cars carrying cattle from said area shall bear placards stating that said cars contain Southern cattle, and each of the waybills of said shipments shall have a note upon its face with a similar statement. Whenever any cattle have come from said area and shall be reshipped from any
299 point at which they have been unloaded to other points of destination, the cars carrying said animals shall bear similar placards with like statements, and the waybills be so stamped. At whatever point these cattle are unloaded they must be placed in separate pens, to which no other cattle shall be admitted.

4. The cars and boats used to transport such animals, the chutes, alleyways, and pens used during transportation, and at points of destination, shall be disinfected in the following manner:

(*a*) Remove all litter and manure. This litter and manure may be disinfected by mixing it with lime or saturating it with a 5 per cent solution of carbolic acid; or, if not disinfected, it may be stored where no cattle can come into contact with it until after November 15.

(*b*) Wash the cars and the feeding and watering troughs with water until clean.

(*c*) Saturate the walls and floors of the cars, and fencing, troughs, and chutes of the pens with a solution made by dissolving 4 ounces of chloride of lime to each gallon of water. Or disinfect the cars with a jet of steam under a pressure of not less than 50 pounds to the square inch.

Cattle from the Republic of Mexico may be admitted into the United States to remain below said Federal quarantine

line after inspection, according to law, but said cattle shall not be permitted to cross said quarantine line otherwise than by rail for immediate slaughter, except by special permit from the inspectors of the Bureau of Animal Industry, issued according to the regulations of the said Bureau, and no permit shall be issued except for cattle free from splenetic or Texas fever, or from contact therewith during the three months preceding the issuance of said permit, and which have been grazed in a locality free from infection of such fever.

Notice is hereby given that cattle infested with the Boophilus bovis, or Southern cattle tick, disseminate the contaglion of splenetic or Southern fever (Texas fever); therefore cattle originating outside of the district described by this order, or amendments thereof, and which are infested with the Boophilus bovis ticks shal be considered as infectious cattle and shall be subject to the rules and regulations governing the movement of Southern cattle.

Stock-yards companies receiving such cattle shall place the same in the pens set aside for the use of Southern cattle, and transportation companies are required to clean and disinfect all cars and vessels which have contained the same, according to the requirements of this Department.

The losses which formally occurred to the owners of susceptible cattle, both in the interstate and export trade, by the contraction of this disease from exposure in unclean and infected cars and pens, and by means of the manure carried in unclean cars from place to place, became a matter of grave and serious concern to the cattle industry of the United States until this danger was removed by the inspec-
300 tion of this Department. It is absolutely essential, therefore, that this cattle industry should continue to be protected as far as possible by separating the dangerous cattle and by the adoption of efficient methods of disinfection.

Inspectors are instructed to see that disinfection is properly done, and it is expected that transportation and stock yards companies will promptly put into operation the above methods.

All prior orders conflicting herewith are hereby revoked.

J. STERLING MORTON, Secretary.

Special Order Modifying Quarantine Line for the State of Texas.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., January 28, 1897.

In accordance with the regulations concerning cattle transportation issued by this Department January 27, 1897, the

State of Texas has located a quarantine line, described as follows:

Beginning at the southwest corner of the county of Pecos, on the bank of the Rio Grande River; thence following the western boundary of Pecos County to the southeast corner of Reeves County; thence following the boundary line between the counties of Pecos and Reeves to the Pecos River; thence southeasterly, following the Pecos River to the northwest corner of Crockett County; thence easterly along the northern boundary of Crockett and Schleicher counties to the southeastern corner of Irion County; thence northerly along the eastern boundary of Irion County to the northeast corner of said county; thence northerly to the southern boundary of Coke County; thence westerly to the southwest corner of Coke County; thence northerly along the western boundary of Coke County to the southern boundary of Mitchell County; thence easterly to the southeastern corner of Mitchell County; thence northerly along the western boundary of Nolan County to the northwestern corner of Nolan County; thence easterly along the northern boundaries of Nolan and Taylor counties to the southeast corner of Jones County; thence northerly along the eastern boundary of Jones County to the northeast corner of said county; thence easterly along the northern boundary of Shackelford County to the southwest corner of Throckmorton County; thence northerly along the western boundaries of Throckmorton and Baylor counties to the northwest corner of Baylor County; thence easterly along the northern boundary of said county to the southeast corner of Wilbarger County; thence northerly along the eastern boundary of Wilbarger County to the Red River; thence continuing in a northwesterly direction along the course of said river to
301 the southeast corner of Greer County; thence northerly, following the course of the North Fork of the Red River to its intersection with the eastern boundary line of Wheeler County; thence north with the eastern boundary line of Wheeler, Hemphill, and Lipscomb counties to the northeast corner of Lipscomb County; thence in a westerly direction with the northern boundary lines of Lipscomb, Ochiltree, Hansford, Sherman and Dallam counties to the northwestern corner of Dallam County to the eastern line of New Mexico.

And whereas said quarantine line, as above set forth, is satisfactory to this Department, and legislation has been enacted by the State of Texas to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Texas by this Department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the

quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, Secretary.

Special Order Modifying Quarantine Line for the Territory of Oklahoma.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., February 2, 1897.

In accordance with the regulations concerning cattle transportation issued by this Department January 27, 1897, the Territory of Oklahoma has located a quarantine line, described as follows:

Beginning on the Red River at the southeastern corner of the county of Greer; thence northerly following the course of the North Fork of the Red River to its intersection with the southern boundary line of Roger Mills County; thence easterly along the southern boundary of Roger Mills and Washita counties to the southeastern corner of Washita County; thence northerly along the eastern boundary of Washita County to the northeast corner of said county; continuing in a northerly direction along the eastern boundary of the county of G to the southwestern corner of the county of Blaine; thence easterly along the southern boundary of Blaine County to the southeast corner of said county; thence north along the eastern boundary of said county to the northwest corner of Canadian County; thence east along the northern boundary of said county to the northeast corner of said county; thence north along the eastern boundary of Kingfisher County to the northeastern corner of said county; thence east along the southern boundary of O County to the southeast corner of said county; thence north along the eastern boundary of O County to the northeast corner of said county; thence east along the southern boundary of K County to the west line of the Ponca
302 Indian Reservation; thence north along the west line of said reservation to the northwest corner of said reservation; thence east along the northern boundary of the Ponca Reservation to the Arkansas River; thence in a northerly direction following the course of said river to its intersection with the thirty-seventh parallel of north latitude at the southern boundary line of Kansas.

So much of the quarantine line for the State of Texas, described in the order of January 28, 1897, beginning at a point on the Red River at its intersection with the southern boundary line of Roger Mills County, and extending northerly and westerly therefrom, is hereby revoked during the enforcement of the above line for the Territory of Oklahoma.

And whereas said quarantine line, as above set forth, is satisfactory to this Department, and legislation has been enacted by the Territory of Oklahoma to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the Territory of Oklahoma by this Department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, Secretary.

Special Order Modifying Quarantine Line for the State of Arkansas.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., February 2, 1897.

In accordance with the regulations concerning cattle transportation issued by this Department January 27, 1897, the State of Arkansas has located a quarantine line, described as follows:

Beginning at the northwest corner of the county of Benton; thence southerly along the western boundary line of Benton and Washington counties to the southwest corner of Washington County; thence easterly along the southern boundaries of the counties of Washington, Madison, Newton, Searcy and Stone to the western boundary of Independence County; thence southerly along the western boundary of Independence County to the southwest corner of Independence County; thence easterly along the southern boundary of Independence County to the southeast corner of Independence County; thence northerly along the eastern boundary of said county to the northeast corner of said county; thence easterly
303 along the southern boundary of Lawrence County to the southeast corner of said county; thence northerly along the eastern boundary of said county to the southwestern corner of Greene County; thence easterly along the southern boundary of Greene County to the southern boundary of the State of Missouri and along said southern boundary of the State of Missouri to the Mississippi River.

And whereas said quarantine line, as above set forth, is satisfactory to this Department, and legislation has been enacted by the State of Arkansas to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Arkansas by this Department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of

the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, Secretary.

Special Order Modifying Quarantine Line for the State of Virginia.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., February 5, 1897.

In accordance with the regulations concerning cattle transportation issued by this Department January 27, 1897, the State of Virginia has located a quarantine line, described as follows:

Beginning at the boundary line of Virginia at its southwestern corner; thence easterly along the southern boundary of Virginia to a point coinciding with the summit of the Blue Ridge Mountains; thence following the summit of said mountains northeasterly to the Blackwater River; thence easterly along the course of said river through Franklin County to its intersection with the Staunton River on the eastern boundary of Franklin County; thence in an easterly direction along the southern and eastern boundaries of Bedford County to the James River; thence following the James River to the southeastern corner of Charles City County; thence northerly and easterly along the western and northern boundaries of James City, Gloucester, and Mathews counties to the Chesapeake Bay; thence south to the northern boundary of Elizabeth City County; thence west and north along the boundaries of Elizabeth City and Warwick counties to the James River; thence southeasterly along the course of the said river to the northwest corner of Norfolk County; thence south along the western boundary of said county to its intersection with the northern boundary of North Carolina; thence east along the southern boundaries of Norfolk and Princess Anne counties to the Atlantic Ocean.

And whereas said quarantine line, as above set forth, is satisfactory to this Department, and legislation has been
304 enacted by the State of Virginia to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Virginia by this Department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, Secretary.

Special Order Modifying Quarantine Line for the State of North Carolina.

U. S. Department of Agriculture,
Office of the Secretary,
Washington, D. C., February 5, 1897.

In accordance with the regulations concerning cattle transportation issued by this Department January 27, 1897, the State of North Carolina has located a quarantine line, described as follows:

Beginning at the northwestern corner of Ashe county at the northern boundary of North Carolina; thence along the western boundary of said State to the southwest corner of the county of Cherokee; thence along the southern boundaries of the counties of Cherokee, Clay, Macon, Jackson, and Transylvania to the southeast corner of the county of Transylvania; thence northwesterly along the eastern boundary of Transylvania County to the southwest corner of the county of Buncombe; thence easterly along the southern boundary of the said county to the summit of the Blue Ridge Mountains; thence in a northeasterly direction following the said mountains to their intersection with the northern boundary of the State of North Carolina.

So much of the quarantine line for the State of Virginia described in the order of February 5, 1897, beginning at the northwestern corner of Ashe County and extending easterly along the southern boundary of Virginia to the summit of the Blue Ridge Mountains, is hereby revoked during the enforcement of the above line for the State of North Carolina.

And whereas said quarantine line, as above set forth, is satisfactory to this Department, and legislation has been enacted by the State of North Carolina to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of North Carolina by this Department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, Secretary.

305 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States of America, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Kansas,
County of Wyandotte—ss.

Albert Dean, of lawful age, being first duly sworn, deposes and says I am live stock agent of the Bureau of Animal Industry of the U. S. Department of Agriculture and have charge of southern cattle transportation west of the Mississippi river, between February 15th and Nov. 15th, of each year, governed by regulations concerning cattle transportation," that are issued annually by the Secretary of the United States Department of Agriculture. The regulations above referred to set forth and establish a Texas fever quarantine line, and all cattle originating south of said line, are only permitted, between the dates above written, to be shipped by rail to points above or north of said quarantine line for immediate slaughter only; wherever said cattle are unloaded, pens or yards are set apart for their use in which no other cattle are permitted, and the cars carrying such cattle, on being unloaded, must be cleaned and disinfected.

This service was first established by J. M. Rusk, secretary of Agriculture in 1889. I received my appointment April 1, 1890 and was given charge of the work west of the Mississippi river with headquarters at the Kansas City Stock Yards, for the reason that the principal market west of the Mississippi river, for southern cattle was at the above named yards. I have four assistants at the Kansas City Stock Yards and in addition thereto have one at Monett, Mo., on the St. Louis & San Francisco Railway, one at Parsons, Kansas, on the M., K. & T. Railway, one at Coffeyville, Kansas on the Missouri Pacific Railway, one at Arkansas City Kansas, on the Santa Fe Railway, one at Caldwell, Kansas, on the Rock Island Railway, one at Fort Worth, Texas, at the Ft. Worth stock yards, and one at Quanah, Texas on the Ft. Worth & Denver City
306 Railway, and one at Los Angeles, California, in charge of movement of cattle from that state. In addition to this branch of the service the Department of Agriculture has a veterinary meat inspection at each abattoir or packing house at Kansas City. The force employed at the Armour Packing Co. have a veterinary or animal inspection service at the Kansas City Stock Yards, that under regulations of Sept. 13, 1893, [inspected] and condemn all animals found to be in-

fected with hog cholera, swine plague, charbon or anthrax, malignant epizootic, catarrh, pyaemia and septicaemia, mange or scab in advanced stages, advanced stages of actinomycosis or lumpy-jaw, inflammation of the lungs or of the intestines, Texas fever, extensive or generalized tuberculosis; animals in advanced state of pregnancy or which have recently given birth to young, any disease or injury causing elevation of temperature or affecting the system of the animal to a degree which would make the flesh unfit for human food; any organ or part of a carcass which is badly bruised or affected by tuberculosis, actinomycosis, abscess, suppurating sore, or tape-worm cysts. I attach instructions to inspectors dated Sept. 13, 1893, and supplementary regulations for the inspection of live stock of even date marked "Exhibit A," and also regulations concerning cattle transportation dated Jan. 27, 1897, marked "Exhibit B." The agents and inspectors of the Department located on the different railways as above mentioned, report to the inspectors at destination, the car numbers of all cars containing cattle that have originated south of the quarantine line established by said cattle regulations, the name of consignee, destination, route, as well as the origin of the cattle, and furnish this office with copies of said report. It is the further duty of the agents or inspectors above mentioned to see that the words "Southern Cattle" [is] marked on each of the waybills of cars containing cattle that have originated south of the quarantine line, and that each car bears a placard with a similar statement, and at points of unloading that the cars containing such shipments of southern cattle shall be cleaned and disinfected before being used for any other purpose.

During the quarantine season of 1896 southern cattle west of the Mississippi river were inspected at the stations on
307 the different railroads as above mentioned and their destination reported to this office as follows: 11673 cars at the Kansas City Stock Yards; 8438 cars at the Nat'l Stock Yards, East St. Louis, and 7599 cars at the Union Stock Yards Chicago.

ALBERT DEAN.

Subscribed in my presence and sworn to before me this 26th day of February, 1897.

[Seal] JAMES RATCLIFFE,
Notary Public.

My commission expires March 28, 1898.

United States vs. Henry Hopkins, et al. Affidavit of Albert Dean, U. S. Inspector.

Indorsed: 7402. The United States, Complainant, vs. Henry Hopkins et al., Defendants. Affidavits of Albert Dean and others. Filed May 31, 1897. Geo. F. Sharitt, Clerk.

The complainant also filed the following affidavits in rebuttal:

308 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Missouri,
County of Jackson—ss.

Edwin E. Wilson of lawful age, being duly sworn on his oath states:

I reside in Kansas City, Missouri, and have resided there for seventeen years; from 1881 to 1886 I was engaged in the cattle business, and was the manager of the Texas Land & Cattle Company, and connected with the combined management of the Prairie Cattle Company, Kansas City Cattle Company and the Muscatine Cattle Company, all with executive offices at Kansas City, Missouri, and it was a part of my business to arrange railroad and stock yards rates for the different companies with which I was connected; that during those years the ordinary commission charged by the live stock commission merchant at the Kansas City Stock Yards was fifty cents a head for cattle, unless otherwise agreed on between the commission merchant and the shipper, and because of agreements between commission merchants and shippers, the commission seldom averaged over twenty-five cents a head; that during those years I made arrangements and received rebates of twenty-five cents per head on cattle shipments from the firms of John R. Stoller & Company, A. J. Snider & Company, Quinlan, Montgomery & Company, and had offers from numerous other commission merchants to handle our cattle at the yards at a commission not to exceed twenty-five cents per head; that during the years from 1881 to 1886 the companies with which I was connected in a managerial capacity sold at the Kansas City Stock Yards from five to ten thousand head a year; that it was the general custom for commission merchants at that time to have travelling agents whose duty it was to go among shippers and make contracts for sell-
309 ing cattle; that it was notorious that the average solicitor for commission firms at Kansas City would rebate on commissions to the extent of at least twenty-five cents per head; that the principal shipping points at that time for the Kansas City market were Dodge City, Kansas, Caldwell, Kan-

sas, and Kiowa, Kansas. Regular soliciting agents were stationed at these points for the purpose of trading with shippers; that under the active competition of these solicitors it is very doubtful if any of the commissions realized on the sales of cattle were in excess of twenty-five cents per head, except where commission firms had made loans to cattle shippers, it being always a stated or implied condition of a contract for a loan that the commission merchant making the loan should sell the cattle and receive the maximum commission of fifty cents per head. Outside of particular instances where loans were made, commissions were largely matters of competition.

EDWIN E. WILSON.

Subscribed and sworn to before me this thirteenth day of March, 1897.

[Seal] WILLIAM A. KNOTTS,
Notary Public, Jackson County, Missouri.
My commission expires January 18th, 1901.

310 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainants,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Kansas,
County of Wyandotte—ss.

John Lawrence being of lawful age and being first duly sworn, deposes and says: That he is a resident of Gainesville, Cook County, Texas, and is a shipper of live stock to the Kansas City market, and has been for the past twenty-five years. That prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and the commission merchant to whom the shipment was made to make such bargain as they could agree upon as to the rate of commission to be charged for selling said stock. That during all the time that he was shipping to the Kansas City market, prior to the organization of the Kansas City Live Stock Exchange, the commission paid by him to live stock commission merchants for selling his cattle averaged about 25 cents per head, or about one-half of the rate charged at the present time and since the organization of the Kansas City Live Stock Exchange. JOHN LAWRENCE.

Subscribed in my presence and sworn to before me this 11th day of March, 1897.

[Seal] JENNIE M. GOODWIN,
Notary Public.

My commission expires March 24th, 1900.

311 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Kansas,
County of Wyandotte—ss.

W. M. Hurst, being of lawful age, and being first duly sworn, deposes and says: I now reside in Kansas City, Mo. I have been a shipper of live stock to the Kansas City Stock Yards market for some twenty years or more. A part of this time I resided in Texas, and shipped cattle from Texas to this market. A part of the time I resided in Kansas, and shipped cattle from Kansas and from other places to this market; also have shipped some hogs to this market. Prior to the organization of the Kansas City Live Stock Exchange in 1886 I was a shipper to this market of cattle from Texas, Kansas, Colorado and the Indian Territory and during all the years of my shipments prior to the organization of the Exchange the rates of commissions of the commission merchants at Kansas City was whatever the shipper and commission merchant agreed upon. During all the time of shipments prior to the organization of the Kansas City Live Stock Exchange I had offers from or could have had agreements with commission men to sell the cattle I shipped here for 25 cents per head as commissions for their services, and a good many cattle were sold for me at 25 cents per head commission. In a good many instances I was a borrower of money from commission men to handle my business, and to use in the cattle business. As the commission men that I borrowed money from time [—] time expected me to ship my cattle to them as a part of the arrangement for making the loan, the rate of commission often depended upon my needs and the scarcity of money. In making my arrangements for a loan it sometimes occurred that I had to or did agree to pay 50 cents per head to the commission man for the sale of the cattle, when they were shipped to the market; but

312 there was no arbitrary rule about it and it was a mere matter of agreement or contract between the shipper and the commission man. If a cattle shipper in those days prior to the organization of the Exchange shipped his cattle to this market without any previous agreement concerning the rate of commission and without being tied up with any commission firm on a contract for loan or otherwise, it is my opinion that he could have procured the services here of competent commission men to make his sales at 25 cents per

head for cattle. I do know that in those years prior to the organization of the Kansas City Live Stock Exchange, some men shipped their cattle here and sold them themselves without employing any commission men or paying any commission for the sale. So far as I know the shipper has not sold his own cattle at this market himself without the aid of commission merchants and the payment of commission since the Kansas City Live Stock Exchange was organized. I have talked with different commission men members of the Exchange, since that, and asked them why the shippers did not sell their cattle themselves in the yards here without paying commission to the commission men, or in other words, why it was not practiced by some shippers as it was before the Exchange was organized, and they told me that they couldn't do it, that the shipper could not make a success of it since the organization of the Exchange, as they did before. From my experience in shipping cattle here, and my observation in and about the stock yards here, and my talk with commission men and familiarity with the methods employed at this market, it is my opinion that a shipper of cattle to this market for sale could not handle his cattle here and make a success in selling them and obtain the fair market price without employing and paying some commission merchant or firm to transact the business. The commission men belonging to the Exchange are so numerous and by reason of the customs, rules and regulations of the buyers and sellers, it has been and is now, in my opinion an impossibility to realize the full market price for stock shipped to this market without the employment of commission merchants to do the business.

W. M. HURST.

313 Subscribed in my presence and sworn to before me this 12th day of March, 1897.

[Seal] JENNIE M. GOODWIN,
Notary Public.

My commission expires March 24, 1900.

314 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainants,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

State of Kansas,
County of Wyandotte—ss.

James H. Thomson, being of lawful age, and being first duly sworn, deposes and says: At the time that the certificates of

membership of Greer, Mills & Co. were surrendered to the Secretary of the Exchange, and that firm voluntarily withdrew from the Exchange as members thereof in November, 1896, they were then members and did not at the date of the surrendering of the certificates stand in the position of suspended members. An order of suspension by the Board of Directors that had been posted of date September 10th, 1896, was on or about September 18, 1896, withdrawn and taken down from the bulletin boards, and another order of the Board of Directors restoring the said firm to membership, and all the privileges of membership in the Exchange substituted in its place, which the Board of Directors of the Kansas City Live Stock Exchange made in pursuance of an order issued by Judge Philips of the United States Court for the Western District of Missouri. Affiant appends to this affidavit and makes it a part thereof a clipping from one of the Kansas City papers of date September 18th, 1896, which gives a history of the proceedings at that time.

JAMES H. THOMSON.

Subscribed in my presence and sworn to before me this 12th day of March, 1897.

[Seal] JENNIE M. GOODWIN,
Notary Public.

My commission expires Mar. 24, 1900.

315 Forced to Back Down.

Greer, Mills & Co. Reinstated by the Live Stock Exchange.

Notice Posted to that Effect.

U. S. Marshal Shelby hastened the Directors' Action.

Threatened to Arrest them.

Futher Complications Certain to Result in Future.

Swifts Defy the Exchange.

Greer, Mills & Co., the live stock commission firm which was recently suspended by the directors of the Kansas City Live Stock Exchange for rebating commissions, were reinstated at a meeting of the directors late yesterday afternoon. Notice to that effect was posted at the exchange near the close of the day's trading.

The reinstatement is the result of Judge Philips' order, issued Wednesday, commanding the exchange to annul the suspension until such time as the case could be heard and decided in the United States Court. Compliance with the order, however, was hastened by a visit United States Marshal Jo Shelby made to the exchange yesterday.

The marshal called upon the directors at their meeting and announced that unless the firm was immediately reinstated, as ordered by the court he would cause the arrest of every one of them.

This information was quickly followed by the posting of the notice of reinstatement. It informed all members of the exchange that pending the action of the United States Circuit Court, Greer, Mills & Co. were entitled to all privileges of membership of the exchange.

Thus, at least temporarily, the Kansas City Live Stock Exchange is in a position where it cannot exclude any person from trading at the yards, and can not compel members of the exchange to boycott firms in business there. If the restraining order be upheld and a permanent injunction granted by Judge Philips, the effect would certainly result in the dissolution of the exchange as now constituted and allow any person to trade without restriction from a board of directors.

Exchange in Hot Water.

The fight made by Greer, Mills & Co. is certain to re-
316 sult in sensational complications, whichever way it shall be decided. If the restraining order be dissolved, it is said, on good authority, that the directors of the exchange intend to not only expel the protesting firm, but also to suspend several other members who are known to have dealt with Greer, Mills & Co. during the period of their suspension and before the restraining order was granted.

When a firm is suspended from the exchange all other members are forbidden to deal directly with the firm suspended, and a violation of this order is punishable under the rules by a fine of $500. Several firms, and also several of the large packers, including Swift and Dold, are known to have bought from Greer, Mills & Co. during the suspension. They are said to be the ones whom the directors intend suspending or fining. An action of this kind would certainly disrupt the exchange, as the packers appear independent on the subject and say that they would pay no attention to any order of the kind mentioned by the directors.

Swift & Co., who are members of the exchange, have bought freely from Greer, Mills & Co. of late and their action has frequently been called to the attention of the directors, but that body did not appear to be ready to suspend or fine any member until the present case is settled. General Manager Wilder, of Swift & Co., said in regard to the matter:

"We are members of the Kansas City Live Stock Exchange, but in this matter of trading with Greer, Mills & Co. we do

not need nor care for the advice of the directors of the exchange. We will continue to buy from the suspended firm as long as we can get our stock at fair prices. As far as our being fined or suspended is concerned, it matters but little, as we care naught for the fights of the exchange, and hardly think the directors would care to try to dictate who we should patronize at the stock yards and who we should refuse to deal with."

If other members looked at the matter in the same light as the Swift Packing Company the rules of the Exchange would have no binding force.

Directors' Actions Disapproved.

Colonel A. J. Gillespie, a pioneer member of the ex-
317 change, in speaking of the matter, censured the directors of the Exchange for their action in the case of Greer, Mills & Co., and termed it as outrageous. He said:

"It is highly probable that the Kansas City Live Stock Exchange as constituted at present will be an institution of the past when this case is settled, as its legal existence has been denied by the courts of Kansas, and its right to prevent members from trading with some particular firm, as in the present case, is very questionable. The sentiment among the members is changing rapidly in favor of the suspended firm, and it is the impression now that the fines of $1,000 levied were excessive and unwarranted. It is also a deplorable fact that the exchange should resort to such underhanded methods as the one employed in discovering who were violating the rebate rule. This Detective Mooney wrote fifty-six letters to members of the exchange, and endeavored to ensnare them into a trap which would cause them the same trouble as that which Greer, Mills & Co. have experienced.

"The firm of Greer, Mills & Co. were said to have rebated to Mooney, but even if this were true, and it is doubtful, the fine should not have been so heavy. This same Detective Mooney about a year ago endeavored to cause many firms to not only break the rebate rule, but also the one in regard to furnishing the markets by telegraph to customers and prepaying the charges. This action was also condemned by the majority of the members of the exchange, and while the rules should be obeyed, there is no excuse for resorting to underhanded tricks to secure the conviction of any member.

318 In the Circuit Court of the United States for the District of Kansas, First Division.

AFFIDAVIT.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

State of Kansas,
County of Wyandotte—ss.

N. B. Greer, being of lawful age and being first duly sworn, deposes, says: That in 1879 he was in partnership with O. W. Way under the firm name of Greer & Way, at Emporia, Kansas, and continued said partnership until 1886, and as such partners were shippers of live stock to the Kansas City market; affiant's firm's headquarters was at Emporia, Kansas, and they shipped for the most part from Emporia, and from all over Southern Kansas to the various commission merchants at the stock yards in Kansas City, Kansas. The shipments were made to the commission merchants to sell for the account of affiant's firm. During all the time mentioned the commissions on hogs per car load was $5.00 per car, that is, the regular or nominal commissions that were supposed to be charged by everybody. This was prior to the organization of the Kansas City Live Stock Exchange. As a matter of fact, the commission merchants during all of said years made such agreements as to the price of commissions as they pleased with their customers from the country, and it was the custom and practice with affiant's firm to obtain from the commission merchant a rebate of one-half of the commission charged, which rebate was settled monthly, and the commission firm would at the end of each month remit to affiant's firm the rebate agreed upon. The $5.00 per car for hogs was the usual or prevailing price understood for commissions prior to the organization of the Exchange, and affiant attaches to his affidavit as samples illustrating how the accounts were made out of each shipment known as original account sales, which were sent to affiant's firm by the commission house making the sale; affiant shipped hogs and cattle to different commission firms, among them being Quinlan, Montgomery & Co. and Wood Brothers, and Keenan & Hancock and Hall Bros. & Co., and others. The selected account sales furnished by the commission men that are attached to this affidavit as samples are not all the
319 account sales, but only those taken for the purpose of showing the rate of commission on hogs before the Exchange was organized. The rebates that were given by the commission men were rendered in a separate account at the end of the month, and in hog shipments were one-half of the

commission, making the commission actually charged and retained by the commission house $2.50 per car. The firm of Greer & Way also shipped a good many cattle during said years to commission men at the Kansas City yards, and affiant also shipped in his own name a good many cattle to commission men at the Kansas City Stock Yards from July, 1885, down to the organization of the Kansas City Live Stock Exchange. That while the nominal or supposed charge, as generally understood to be among the commission men, was 50 cents per head for cattle, the actual facts were that they made such agreement with their country customers for commissions to secure business largely based upon the amount of business the country customer would furnish them; and it was usual and customary to rebate 25 cents a head for cattle, which would be one-half of the commission as shown on the account sales rendered by the commission man to his country customer. These commission rebates were sent out by the commission merchants monthly, or credit given for the same on the books of the commission firm. But the rebates were given in separate accounts, and credited to the shipper, and as a usual thing settled monthly. Other commission firms also than those I actually did trade with offered to sell our cattle for 25 cents a head and our hogs at $2.50 a car. From my acquaintance with other shippers and my frequent visits to the Kansas City Stock Yards and conversation with both commission men and shippers I know other shippers also sold their cattle or had their cattle sold at 25 cents per head and their hogs as low as $2.50 a car prior to the organization of the Exchange.

On or about December 17, 1896, the first hogs that we sold after the boycott on us was raised by the restraining order issued by Judge Holt in the case now pending in this court affiant had a talk with Mr. Kirk Armour, of the Armour Packing Company, at their packing house. On that occasion I went over to see Mr. Armour about buying our hogs, and to
320 find out if they would trade with us. He knew we were in trouble with the Exchange, and in that conversation Mr. Armour said that he would like to see the case with the Exchange compromised and the trouble settled. He made the statement to me during that conversation that he would rather have the ill will of one firm, meaning Greer, Mills & Co., than the ill will of ninety firms, meaning the ill will of the entire Exchange. In that conversation he said that as long as the courts protected them by injunction he would buy our stock and pay as much to us as to others. The Armour hog buyer at that time was Mr. Beggs, who was also one of the directors of the Live Stock Exchange, and I told him one of the worst

men we had to deal with was his man Beggs. Mr. Armour said to me in reply that he had instructed Mr. Beggs to buy our hogs, and he would take it up with him again and see that he did buy them, and pay us as much for our hogs as he would pay anybody else for the same class of hogs. Right after that conversation Armours and other packers bought our hogs as they had done before the boycott. This was after the issuing of the restraining order by Judge Holt, which is still in force at this date. He gave me to understand in this conversation that without the restraining order or injunction from the court protecting them against the Exchange that they could not afford to buy our stock from us.

Affiant further states that he has read the affidavits sworn to in bulk by E. J. Ricks, W. S. Hanna and nine others, wherein on page 2, they say that Greer, Mills & Co. were suspended for non-payment of fine by the Board of Directors leaving it to be inferred that they had been suspended from the Exchange prior to their surrendering their certificates of membership. The fact is, that at the time the certificates of membership were surrendered the firm of Greer, Mills & Co. were not suspended, but were members of the Exchange up to the time of withdrawing therefrom, by the surrender of their certificates. It is true that on September 10, 1896, a notice of suspension by the order of the Board had been posted, but that notice had been taken down, and the order of suspension revoked by the order of the Board of Directors, and such order posted on the bulletin board after Judge Philips had issued his restraining order and mandatory direction in the case of Greer, Mills &
Co., in the Circuit Court of the United States for the
321 Western District of Missouri, and it is not true that Greer, Mills & Co. stood in the relation to the Exchange as suspended members at the time the certificates of membership of the members of the firm of Greer, Mills & Co. were surrendered at the date of their withdrawal from the Exchange on November 16, 1896.

Affiant states that he has never made any threats, and neither have the members of the firm of Greer, Mills & Co. made any threats to destroy the usefulness of the Kansas City Live Stock Exchange. The only part of said exchange that affiant or the firm of Greer, Mills & Co. have opposed or been striking at are the illegal rules and by-laws. The only objections or trouble the firm of Greer, Mills & Co. have had with the Exchange has arisen from the by-laws of the Exchange, that have been declared by the courts of Kansas to be illegal and void. It is by reason of such by-laws that the Exchange is given the power to injure and destroy the business of others.

"The affidavit of E. J. Ricks and others above referred to states that Mess. Wallace, Papham and Beggs who are the authors of the alleged letters and telegrams set forth in the affidavit of Norman B. Greer, were at the time of sending the same solicitors and agents for said Greer, Mills & Co., and affiants believe that said communications constitute a part of the plan and purpose of the said Greer, Mills & Co. to manufacture evidence tending to show that they have been subjected to what is known as a boycott." Affiant states the fact to be that Al. Papham never was in the employ of Greer, Mills & Co., but is an extensive shipper; that Wallace never was in the employ of the firm of Greer, Mills & Co., so far as affiant knows, and if Beggs was at work for the firm, it was for the Chicago house and not for the Kansas City branch. Affiant does know and states the fact to be that neither of the letters and telegrams or any part of them were dictated by the firm of Greer, Mills & Co., or any of their employees, nor were such letters and telegrams instigated by the firm of Greer, Mills & Co. for any purpose, but that such letters and telegrams came from the parties whose names are subscribed to them in the natural and usual course of business, and
322 grew out of the condition of things that at the time surrounded the writer or sender growing out of the boycott on the firm of Greer, Mills & Co., and it is not true that such communication constitute a part of a plan or purpose to manufacture evidence to show a boycott. That such evidence was the natural outgrowth of the boycott and caused by it.

Affiant further says in reference to the statement made in said affidavit on page 2 that reads "Several years ago the said firm violated the same (meaning the rules) but such violation was excused and the penalty imposed therefor remitted on the [face] of a specific promise by said firm that they would thereafter faithfully keep and observe the same" is not a correct and full statement of the facts. The real facts are, that on such former accusation or charge against the firm of Greer, Mills & Co., it was proven that nearly all of the members of the Exchange from the president down were doing the same things that Greer, Mills & Co., were charged with and for which they were attempting to fine Greer, Mills & Co. The charge was that Greer, Mills & Co. were employing as solicitor a man engaged in another business. When it was charged and proven that nearly every other member of the Exchange including the president, had been doing the same thing, the charges were withdrawn, and the injunction suit commenced by Greer, Mills & Co. dismissed, each side paying their own costs.

N. B. GREER.

Subscribed in my presence, and sworn to before me this 12th day of March, 1897. JENNIE M. GOODWIN,
[Seal] Notary Public.
My commission expires March 24th, 1900.

323 Kansas City Stock Yards,
Kansas City, Mo., June 23, 1885.

Commission dealer in live stock. Wood Brothers.
S. E. Wood.
D. W. Wood.
E. A. Wood.

Sold for account of N. B. Greer,
Emporia, Kansas.

Hogs.	Weight.	Off.	Price.		Amount.
1 dead.	300		1.00	3.00	
54	14680	120	3.65	531.44	$534.44

Morris B. & Co.

Charges.

	Freight	23.50	
	Yardage	4.32	
	Hay		
3 sows	Corn	1.50	
	Commission	5.00	34.32
	Net proceeds		500.12

E. & O. E. Wood Brothers,
Per

324 Kansas City Stock Yards,
Kansas City, Mo., June 25, 1885.

Commission dealer in live stock. Wood Brothers.
S. E Wood.
D. W. Wood.
E. A. Wood.

Sold for account of N B. Greer,
Emporia, Kansas.

Hogs.	Weight.	Off.	Price.		Amount.
Dold 69	14950	40	3.75	559.12	
1 dead.	160		1.00	1.60	
1 dead.	200		1.00	2.00	
					562.72

Charges.

Freight	25.00	
Yardage	5.60	
Hay		
Corn	1.50	
Commission	5.00	37.10
Net proceeds		$525.62

E. & O. E. Wood Brothers,
Per

325

Kansas City Stock Yards,
Kansas City, Mo., July 22, 1885.

Commission dealer in live stock.
S. E. Wood.
D. W. Wood.
E. A. Wood.

Wood Brothers.

Sold for account of N. B. Greer,
Emporia, Kansas.

Hogs.	Weight.	Off.	Price.		Amount.
Fowler 62	14120	200	4.37½	609.	
					609.00
		Charges.			
		Freight		26.75	
5 sows.		Yardage		4.96	
		Hay			
		Corn		1.50	
		Commission		5.00	38.21
		Net proceeds			570.79

E. & O. E. Wood Brothers,
Per

326

Kansas City Stock Yards,
Kansas City, Mo., July 28, 1885.

Commission dealer in live stock.
S. E. Wood.
D. W. Wood.
E. A. Wood.

Wood Brothers.

Sold for account of N. B. Greer,
Emporia, Kansas.

Hogs.	Weight.	Off.	Price.		Amount.
Garrett 44	9070	200	4.25	376.97	
Bersin 1 cripple				9.50	
					386.47
		Charges.			
		Freight		23.50	
3 sows.		Yardage		3.60	
1 stag.		Hay			
		Corn		.75	
		Commission		5.00	32.85
		Net proceeds			$353.62

E. & O. E. Wood Brothers,
Per

327

Kansas City Stock Yards,
Kansas City, Mo., July 9, 1885.

Commission dealer in live stock.
S. E. Wood.
D. W. Wood.
E. A. Wood.

Wood Brothers.

Sold for account of N. B. Greer,
Emporia, Kansas.

Hogs.	Weight.	Off.	Price.		Amount.
Bassett 55	11680	240	3.75	429.00	
Beson 1 cripple.				9.00	
					438.
		Charges.			
		Freight.....		25.	
2 sows.		Yardage.....		4.48	
2 stags.		Hay			
		Corn.....		1.15	
		Commission.....		5.00	35.63
		Net proceeds ..			402.37

E. & O. E.

Wood Brothers,
Per

328

Kansas City Stock Yards,
Kansas City, Mo., Feb. 25, 1884.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price	
50	13600	160	6.80	
				914.92
	Charges.			
	Freight.....		27.	
	Yardage		4.	
	Hay			
Quinlan, Montgomery & Co.	Corn		1.50	
M.	Commisssion		5.00	37.50
E. & O. E.	Net proceeds..			877.42

329

Kansas City Stock Yards,
Kansas City, Mo., Dec. 29, 1880.

Quinlan Montgomery & Co.
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
58	14850		4.35	638.14

2 sows, 80
1 stag, 100 180 dock.
1 hog unsold. Market slow to-day, none sold till afternoon.

Charges.		
Freight	25.	
Yardage	4.72	
Hay		
Corn	75.	
Commission	5.00	35.47
		602.47

E. & O. E. Quinlan M. & Co. G. Net proceeds ....

330

Kansas City Stock Yards,
Kansas City, Mo. Dec. 30, 1880.

Quinlan Montgomery & Co.
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.		Dockage.	Price.	
58	14850	Completed sales.	180	4.35	638.14
1	310			4.00	12.40
59					650.54

2 sows, 80
1 stag, 100 180 off.

Charges.		
Freight	25.00	
Yardage	4.72	
Hay		
Corn	.75	
Commission	5.00	35.47
		615.07

E. & O. E. Q. M. & Co. Net proceeds.

331 Kansas City Stock Yards,
Kansas City, Mo., 3/24, 1881.

Quinlan, Montgomery & Co.
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage	Price.	
1 dead.	180		2½	4.50
76	18410	200	5.00	910.50
77				915.00

Last car 1 crip..... 6.00
6 750.4[10]...30.75

36.75

Charges.

	Freight.....	25.00	
2 stags, 200 dock.	Yardage.....	6.08	
Very slow market.	Hay		
	Corn	1.50	
	Commission	5.00	37.58
	Net proceeds..		877.42

E. & O. E. Quinlan, M. & Co.
G.

332 Kansas City Stock Yards,
Kansas City, Mo., April 22, 1881.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
68	13,070	160	5.37½	693.91

Charges.

	Freight	22.00	
	Yardage.....	4.00	
4 sows, 160 dock.	Hay		
	Corn	2.65	
	Commission....	5.00	33.65
	Net proceeds..		660.26

E. & O. E. Quinlan, M. & Co.
G.

333

Kansas City Stock Yards,
Kansas City, Mo., ..., 188 .

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
70	14,710	140	6.25	910.62
1 dead.	250		1½	3.75
				914.37

Charges.

Freight.....	30.	
Yardage.....	5.68	
Hay		
Corn.....	5.50	
Commission	5.00	46.18
Net proceeds.		868.19

1 boar unsold.

E. & O. E. Q., M. & Co.
M.

334

Kansas City Stock Yards,
Kansas City, Mo., Jan'y 31, 1881.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
57	15,570	220	5.00	767.50
10	1,790		4.90	87.71
				855.21

Charges.

Freight.....	25.00	
Yardage	5.36	
Hay		
Corn.....	2.65	
Commission	5.00	38.01
Net proceeds .		817.20

3 sows, 120.
1 stag, 100. 220 dock.
Closed steady.

E. & O. E. Q., M. & Co.

335

Kansas City Stock Yards,
Kansas City, Mo., ..., 188..

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
65	16,050	40	5.90	944.50
2 dead.	560		2.	11.20
				955.70

Charges.		
Freight	25.00	
Yardage	5.20	
Hay		
Corn		
Commission	5.00	35.20
Net proceeds..		920.50

Quinlan, M. & Co.
M.

E. & O. E.

336

Kansas City Stock Yards,
Kansas City, Mo., Mch. 1st, 1882.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
69	16,560	40	6.45	1,065.54

Charges.		
Freight	25.00	
Yardage.....	5.52	
Hay		
Corn	1.	
Commission	5.	36.52
Net proceeds .		1,029.02

E. & O. E. Quinlan, Montgomery & Co.
M.

337

Kansas City Stock Yards,
Kansas City, Mo., Apl. 27, 1883.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
57	14,100.	120	$7\frac{1}{8}$	936.07
3 dead.	620.		$1\frac{1}{2}$	9.30
				1,005.37

Charges.

Freight	25.	
Yardage..... ...	4.56	
Hay		
Corn	1.50	
Commission ...	5.	36.06
Net proceeds.		$969.31

E. & O. E. Quinlan, Montgomery & Co.
M.

338

Kansas City Stock Yards,
Kansas City, Mo., Dec. 5, 1885.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
43	12,300	120	$3\frac{1}{2}$	$426.30

Charges.

Freight	25.	
Yardage.....	3.44	
Hay		
Corn	1.50	
Commission	5.00	34.94
Net proceeds.		$391.36

E. & O. E. Quinlan, Montgomery & Co.
M.

339

Kansas City Stock Yards,
Kansas City, Mo., June 17, 1885.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.		
1 d.	220		1.	2.20	
11	1380		3.40	46.92	
55	13440	240	3.60	475.20	
					524.32
		Charges.			
		Freight		25.00	
		Yardage		5.28	
		Hay			
		Corn		1.50	
Q., M. & Co.		Commission		5.00	36.78
		Net proceeds.			487.54

E. & O. E.

340

Kansas City Stock Yards,
Kansas City, Mo., Aug. 29, 1885.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.

Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
24	4,250	40	4.20	$176.82
30	1,096	200	4.20	451.92
1 d.	400		1.	4.
				132.74
		Charges.		
		Freight	27.50	
		Yardage	5.04	
		Hay		
		Corn	1.50	
		Commission	5.	39.04
		Net proceeds.		593.70

E. & O. E. Quinlan, Montgomery & Co.

341

Kansas City Stock Yards,
Kansas City, Mo., June 24, 1885.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
1 d	320		3.20	
52	16,990	160	610.08	613.28

Charges.

Freight	25.	
Yardage	4.16	
Hay		
Corn.....	1.50	
Commission.....	5.	35.66
Net proceeds.		577.62

E. O. & E. Quinlan, Montgomery & Co.

342

Kansas City Stock Yards,
Kansas City, Mo., Feb. 24, 1886.

Quinlan, Montgomery & Co.,
Live Stock Commission Merchants.
Sales for account of Greer & Way.

Hogs.	Weight.	Dockage.	Price.	
68	15,300	80	3.90	$593.58

Charges.

Freight	25.	
Yardage	5.44	
Hay		
Corn.....	1.50	
Commission	6.	37.94
Net proceeds.		$555.64

E. O. & E. Quinlan, Montgomery & Co.

M.

343 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainants,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

Wm. P. Goode, being of lawful age and being first duly sworn, deposes and says: That he is a resident of Lenexa, Johnson County, Kansas, and a shipper of live stock to the Kansas City market. That prior to the organization of the Kansas City Live Stock Exchange he was a shipper to the Kan-

sas City market and had been for twenty years, shipping both cattle and hogs for sale at that market to live stock commission merchants at the Kansas City Stock Yards. That prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and commission merchants to whom the shipment was made to make such bargain as they could agree upon as to the rate of commission to be [chargeed] for selling said stock, both hogs and cattle. That while the supposed charges for commissions was 50 cents per head for cattle and $5.00 per car load for hogs prior to the organization of the Kansas City Live Stock Exchange, affiant sold his cattle through commission men for 25 cents per head, or rather obtained a rebate of 25 cents per head on cattle, and $1 on hogs per load. The rate of commission on both hogs and cattle depended a great deal upon the volume of business, and where a shipper had any considerable
344 amount of stock to sell, it was usually the custom and practice to sell them as low as 25 cents a head for cattle and $4.00 per car load for hogs.

From affiant's experience in shipping cattle and hogs to the Kansas City market prior to the organization of the Kansas City Live Stock Exchange, the affiant knows it was a common thing for a commission man to rebate 25 cents per head for cattle and $1.00 per carload for hogs, and that such rebates were not limited to affiant's business, but was given to others that were shipping to Kansas City market. That it is only since the organization of the Kansas City Live Stock Exchange and the establishing by their rules and by-laws of the rates of commissions that the arbitrary charge is made of $12 per car load for cattle and $6 per car load for hogs.

W. P. GOODE.

Subscribed in my presence and sworn to before me this 13th day of March, 1897. GEO. W. BOWER,

[Seal.] Notary Public.

My commission expires August 23, 1898.

Indorsed: United States vs. Henry Hopkins et al. Affidavit of Wm. P. Goode.

345 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainants,

vs.

Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,

County of Wyandotte—ss.

John O. Boggs, being of lawful age and being first duly sworn, deposes and says: That he is a resident of Lee's Sum-

mit, Mo., and a shipper of live stock to the Kansas City market. That prior to the organization of the Kansas City Live Stock Exchange he was a shipper to the Kansas City market and had been for twenty-five years, shipping both cattle and hogs for sale at that market to live stock commission merchants at the Kansas City Stock Yards. That prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and commission merchants to whom the shipment was made to make such bargain as they could agree upon as to the rate of commission charged for selling said stock, both hogs and cattle. That while the supposed charges for commissions was 50 cents per head for cattle and $5.00 per car load for hogs prior to the organization of the Kansas City Live Stock Exchange, affiant sold his cattle through commission men for 25 cents a head and $2.50 rebate on hogs per car load. The rate of commission on both hogs and cattle depended a great deal upon the [valume] of business, and where a shipper had any considerable amount
346 of stock to sell, it was usually the custom and practice to sell them as low as 25 cents a head for cattle and $2.50 per car load for hogs.

From affiant's experience in shipping cattle and hogs to the Kansas City market prior to the organization of the Kansas City Live Stock Exchange, the affiant knows it was a common thing for a commission man to rebate 25 cents per head for cattle, and $2.50 per car load for hogs, and that such rebates were not limited to affiant's business, but was given to others that were shipping to said market. That it is only since the organization of the Kansas City Live Stock Exchange and the establishing by their rules and by-laws of the rates of commissions that the arbitrary charge is made of $12.00 per car load for cattle and $6.00 per car load for hogs.

JOHN O. BOGGS.

Subscribed in my presence and sworn to before me this 12th day of March, 1897.

[Seal] GEO. N. LONGFELLOW,
Notary Public.

My commission expires November 13th, 1898.

Indorsed: United States vs. Henry Hopkins et al. Affidavit of Jno. O. Boggs.

347 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainants,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

The State of Kansas,
County of Wyandotte—ss.

Daniel Whiting, being of lawful age and being first duly sworn, deposes and says: That he is a resident of Lee's Summit, Mo., and a shipper of live stock to the Kansas City market. That prior to the organization of the Kansas City Live Stock Exchange he was a shipper to the Kansas City market and had been for twenty years, shipping both cattle and hogs for sale at that market to live stock commission merchants at the Kansas City Stock Yards. That prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and commission merchants to whom the shipment was made to make such bargain as they could agree upon as to the rate of commission [chargeed] for selling said stock, both hogs and cattle. That while the supposed charges for commissions was 50 cents per head for cattle and $5.00 per car load for hogs prior to the organization of the Kansas City Live Stock Exchange, affiant sold his cattle through commission men for 25 cents a head and $2.50 rebate on hogs per car load. The rate of commission on both hogs and cattle depended a great deal upon the volume of business, and where a shipper had any considerable amount of stock to sell,
348 it was usually the custom and practice to sell them as low as 25 cents a head for cattle and $2.50 per car load for hogs.

From affiant's experience in shipping cattle and hogs to the Kansas City market prior to the organization of the Kansas City Live Stock Exchange, the affiant knows it was a common thing for a commission man to rebate 25 cents per head for cattle, and $2.50 per car load for hogs, and that such rebates were not limited to affiant's business, but was given to others that were shipping to said market. That it is only since the organization of the Kansas City Live Stock Exchange and the establishing by their rules and by-laws of the rates of commissions that the arbitrary charge is made of $12.00 per car load for cattle and $6.00 per car load for hogs.

DANIEL WHITING.

Subscribed in my presence and sworn to before me this 12th day of March, 1897. F. L. HACKLER,
[Seal] Notary Public.
My commission expires July 10th, 1898.

Indorsed: United States vs. Henry Hopkins et al. Affidavit of Daniel Whiting.

349 In the Circuit Court of the United States for the District of Kansas, First Division.

The United States, Complainant,
vs.
Henry Hopkins et al., Defendants.

AFFIDAVIT.

A. Wagoner, being first duly sworn, deposes and says: I am now living in Kansas City, Mo. Formerly I was a resident of Chicago, Ill. Prior to my residence in Chicago I was a resident and citizen of Iowa. Twenty years ago or more while living in the State of Iowa I was engaged in the business of handling and shipping live stock to the Chicago market. My shipments were mostly from Iowa, but occasionally from the State of Missouri. I was in such business of handling and shipping live stock to the Chicago market from Iowa and Missouri for some ten or twelve years. I went from Iowa to Chicago and there became a live stock commission merchant at the stock yards, where at that day the purchase and sale of live stock was made at the Chicago market. I had been in Chicago as a live stock commission merchant some three or four years before the organization of what is known as the Chicago Live Stock Exchange. Prior to the organization of such exchange at Chicago, shipments were made of live stock to that market and consigned or delivered when they arrived at such yards to persons usually acquaintances who were located at such yards and who were familiar with the methods of handling the live stock and their care and the steps necessary to make a sale thereof at that market. Such persons so handling the stock shipped to their care from the country made a charge for their services and time and attention given to seeing that the live stock had proper care and attention, were honestly weighed and accounted for and the proceeds of sale remitted, and that they obtained fair treatment and the regular
350 market price for the stock so handled. The persons performing that kind of service for their friends and country acquaintances were eventually called commission merchants, because their business consisted in giving their time and attention, their business character and integrity to trying to obtain the best market price for the live stock so shipped to them for the purpose.

During affiant's residence and business in the State of Iowa he formed a large number of acquaintances and made many

friends in the live stock business and among cattle growers, feeders and shippers, who became his patrons after he went into the commission business in the City of Chicago, and in that way built a good business for himself as a live stock commission merchant at the stock yards in Chicago. During the three or four years that affiant was handling such business as a commission merchant prior to the formation of the live stock exchange in Chicago affiant became familiar and was observant of all the methods of doing business in the shipment to said market, the handling, care and sale of live stock on said market, and the methods of doing business by commission men, and their dealings with their patrons from the country. From such knowledge affiant is able to state and does state as a fact, that while the business was so being carried on at said market without the aid of any exchange or combination to uphold commissions or to discipline members for illegal or unfair transactions there was no more complaint or dissatisfaction about commissions charged for services rendered, nor about unfair dealing or any trickery or advantage taken of country shippers than there is to-day under the control and monopoly of the Chicago Live Stock Exchange, but business went on as harmoniously and satisfactory to all parties concerned as it does to-day.

Affiant was one of about thirteen men doing business at Chicago as live stock commission merchants who took the first step and made the first organization that eventually led to the formation of what is now The Chicago Live Stock
351 Exchange. The necessity that brought us together at that time was this: The hogs from the country were all sold at the Chicago market at that time to the packers or slaughter houses, and eastern shippers or to parties who purchased for eastern shippers. In selling hogs for slaughter a certain amount is taken off in weight where there are piggy sows, stags or rough hogs, as such animals do not make good meat for food product, or at least packers claim that they make less good meat than other hogs, and that they can not afford to pay as much for them. That is what is called docking hogs. At this time the packers had in their employ and furnished men for the purpose of docking hogs as they were weighed over the scales. The commission men did not have a word to say about it. They would not take the estimate of weight to come off or that was fair and just of the commission men but arbitrarily took off such weight as they pleased, and would not buy unless their own arbitrary deduction was made. The purchase of the hogs was first made by the packers before this dockage or before the men that they called the shrinker passed upon them. While the seller of the hogs might argue the question as to how much ought to come off

they either had to take the estimate made by the packers' men or keep their hogs and sell them over again, which in most cases meant 5 or 10 cents less in the price agreed to on the first sale, thus entailing a loss in that way. This did not apply to the parties who purchased for shipments because such purchases were hogs selected and picked out that were smooth and merchantable, and not the class of hogs that were sold to the packers.

The owners of the hogs and shippers from the country made such complaint of unjust deductions and heavy dockage forced by the packers that myself and the others named, commission men, proposed to adopt some measure or plan to prevent such arbitrary work, and we got together and adopted a plan of this kind: We submitted a plan to the packers that dis-
352 interested men should be chosen who were not interested with the packing companies or as commission merchants, who should be located at each scale and their salaries be paid by the commission merchants, who should at the time of weighing pass upon the amount that should be deducted or docked. If their dockage was not satisfactory to the packing interest in any case, that a general inspector who was likewise hired by the exchange but who was a disinterested party should then be called to give his judgment and if they were not satisfied then with his dockage, then, a committee from our number consisting of two was to be called and the matter submitted to such committee, and if they could not agree, this committee should call a third man and the decision of the three should be final. This arrangement the packers refused to agree to for several days, no sale could be made of hogs, and they accumulated there in great numbers until finally, Mr. Armour notified the committee that his buyers would go to buying hogs on the plan submitted by our committee. This was the beginning of what finally became the exchange. The business then continued in that way until the number of commission merchants multiplied and the commission merchants in their increased numbers practically controlled the commission business, or all the buying and selling of live stock was done through their hands at that market. The members were drawn together, or rather all the commission men that were doing business there were drawn together by levying an assessment of five cents a car on all the hogs that arrived at that market to pay the wages of the dockers at the scales, and as the business has grown they afterwards added rules and by-laws for their government and fixed a charge for becoming members of ten dollars each, and made a rule for levying an assessment on the members for such purposes as the regulations provided for. This was the beginning of the combination. Up to this time no obstacles were placed

in the way by the combination to anyone doing business as a commission merchant. The idea was then conceived
353 of making every one who done a live stock commission business in that market become members of this organization, and to that end articles of association, rules and by-laws were so framed as to accomplish that end. The idea was conceived that more money could be made by the different members of the combination out of commission charges by establishing rates of commission and other regulations and such rules and by-laws as were necessary to accomplish that end were embodied in the constitution and by-laws of the association. Regulations were made for carrying these into effect by fines and forfeitures, and by preventing any one from doing business at that market who did not join in association and comply with the rules and regulations. As a means to effect that and when the association desired to discipline any member or prevent any one not a member from doing business, the rules were so amended from time to time so as to compel a person or firm to join the association and to live up to the by-laws, and a means provided for boycotting and crushing out the business of such member or person so refusing to join. For this purpose the rule for posting persons on the bulletin board was adopted, and a rule made that when such person was so posted it should be the duty of all members to refuse to trade or do business with such party so posted, and in this way an effectual boycott was inaugurated. The Chicago Live Stock Exchange up to this time have as a part of its by-laws, rules and regulations very drastic rules for preventing the carrying on of the business of dealing in live stock with any traders on that market unless they belong to such combination.

Affiant is familiar with the organizations of similar associations at Kansas City, St. Louis and Omaha, in each place called live stock exchanges composed for the most part of live stock commission merchants and others who are dealing
354 in live stock at these markets. The Kansas City Live Stock Exchange and like exchanges at both St. Louis and Omaha are taken from the constitution, by-laws, rules and regulations of this Chicago Exchange. They have modeled after the Chicago Exchange in nearly all respects that go to accomplish the common purpose of controlling the trade in that line.

The experience of affiant covering twenty years in the live stock business as commission merchant and connected with others doing business as commission merchants enables affiant to say that such combination, so far as the control of the prices charged for commissions, preventing the sending out of

information concerning the state of the market, limiting the number of employees a commission house may have as solicitors or traveling men, and like rules of that class, is detrimental to the best interests of stock growers and shippers and to the best interest of the market which such combination seeks to control. Affiant would state as some of the reasons why it has that effect as follows: The rules and amendments, and the amendments to rules that have been passed, in my judgment, work a great injustice to a great many people who are identified in the live stock interest in the way of shutting them off from the advantages of a market, making it impossible for them to do business with the countryman at Chicago unless he is a member of the Live Stock Exchange, while at the same time he may be doing business at other exchanges and being a member of other exchanges, by the rules and regulations of the Chicago Exchange he is shut off from all the benefits that he might receive in the way of shipments of stock from shippers and friends of his in adjacent states who ship their stock to Chicago. The same rules hold good at the Kansas City market, and in this way I maintain that the live stock interests of the country and a great many men are injured who are identified with the live stock interests and their interests are materially affected. For instance, a man
355 who has identified himself with the live stock business located in some one state and desires to do business at one of the public markets where such live stock has to be sold, if he is prevented from doing the business of selling or buying or shipping to that market stock for sale in his interest without hindrance or the expense of paying what the rules of some exchange may require as a condition of his doing business, a great majority of men are shut out; as now organized and conducted no live stock goes to these markets by shipment from the country or by shipment from these markets to the country without having to be handled by the commission men that belong to these combines. The same carload of cattle may pay as high as two or three commissions before getting through such market all of which comes out of the grower, owner or shipper. To illustrate: a farmer may ship a carload of cattle to the Kansas City market. They have to be shipped to a commission firm according to the custom that the business has been done through these exchanges. This commission firm will sell such carload of cattle, for instance, to some speculator, who buys for resale; a commission is paid for that sale. Then the speculator may find a purchaser who is willing to pay nearer the value of the cattle and a higher price than the farmer had to take in the first sale. This speculator may, in accordance with the custom and practice grown up, get the services of the same commission firm to make the

second sale, for which a commission is paid. This same commission firm may have a customer from the country who desires to purchase a carload of feeders, and the commission man knowing of this same carload of cattle that has been twice sold, and on which they have already received two commission charges, may induce the party from the country to buy the same, making the third sale and the third commission charge, or thirty-six dollars the aggregate of three commissions for the sale of the same carload of cattle. It is such manipulation brought about by these combinations that makes such charges and such business possible, by the advantages given through such organizations in controlling trade.

356 I claim the methods are detrimental to the best interests of the live stock industry. The instances I have given are not imaginary but illustrate actual transactions that take place very frequently at each of these markets. I may say too, that the excessive prices charged for membership being now $2500 at the Kansas City market to become a member of the Kansas City Live Stock Exchange, is a hardship and prevents a large number of people interested in the live stock industry from dealing at these markets, and if the trading at these markets can continue to be controlled by such organization it will finally end in a paralysis of the live stock industry. I never have believed it was right or to the best interests of the trade to charge a commission on cattle sold out of the market to regular customers in the country as feeders; that is, that were going out into the country to be fed and prepared to come back to the same market as fat cattle, the commission man knowing at the time he made the sale to his country patron and charging him a commission for such service, that when they were fat and ready for market they would come back for sale, on which he would get a second commission. Yet the farmer or feeder have to submit to such double charges. The commission man in complying with the rules of the exchange is compelled to submit to the dictates of the exchange in this respect. The commission men of Kansas City charge $12 a car for buying and selling, that being the rate fixed by the rules.

The cattle and live stock of all kinds that are shipped to this market for sale originate in several different states and territories. In being shipped at the place of origin to this market for sale they pass out of the state of their origin for the most part through or into other states before the final consummation of the sale or purchase, and before they become property of changed ownership in another state [or] converted into a food product for home or foreign consumption; a large percentage of the shipments to the Kansas City market

357 are slaughtered for food product by the packers and

such food product shipped into other states and to foreign countries. The business is essentially interstate in its nature, and anything that goes to increase the cost of the food product or to decrease the amount the raiser or grower shall receive for the same is to that extent an embargo upon the business, and upon such live stock as product.

Any combination at these markets that in effect controls the price or enters into as a factor, influencing the price by concerted action and adding unnecessary charges, is certainly detrimental to the best interests of the producers and feeders of live stock and to the farming and agricultural interests generally. As such combinations have their center of control at these markets, they affect through their rules and by-laws the interests of different states and the interests of the men who are identified with the live stock industry. It prevents that free competition that should exist in all markets, and which makes the life and trade of commerce.

It is the mature opinion of affiant from his long experience that the rules and regulations of the exchanges to control the trade at these markets have been carried too far for the best interests of the markets and the general welfare of all parties interested in the trade, and that aside from the rules to inculcate high moral dealing and discipline for fraud and breach of contracts that the rules they have are not necessary either to build up or maintain a public market.

A. WAGGONER.

Subscribed in my presence and sworn to before me this 2nd day of March, 1897. JENNIE M. GOODWIN.

[Seal] Notary Public.

My term expinres March 24th, 1900.

358 Indorsed: United States vs. Henry Hopkins et al. Affidavit of A. Wagoner.

* * * * * * * * *

424 In the Circuit Court of the United States in and for the District of Kansas, First Division.

The United States of America, Complainant,
No. 7402. vs. In Equity.
Henry Hopkins, A. Isaacson, F. X. Jardon, J. T. Kiely, A. J. Knollin, W. L. Ladd, T. F. McDonald, J. W. Orlander, M. S. Peters, O. C. Peters, Gilamn Reed, E. E. Richardson, W. A. Rogers, J. K. Southee, J. M. Sweeney, Henry Theis, E. E. Trowbridge, Harry Trower, O. B. Trower, S. R. Trower, Wm. Winder, R. H. Wise, L. M. Egan, Fred Ehrke, W. F. Grant, W. S. Hannah, J. H. Clofelter, T. E. Ladd and Woodson McCoy, and others, Defendants.

STATEMENT OF THE CASE.

The bill in this case is presented under the act of Congress of July 2nd 1890 (26 Stat., 209); it charges that each of the defendants, about three hundred in number, are members of a voluntary, unincorporated association known and designated as the Kansas City Live Stock Exchange, and have adopted articles of association and rules and by-laws whereby they have agreed that they will faithfully observe and be bound by the same; that the government of said association is vested in a board of eleven directors and its officers, consisting of a president, vice-president, secretary and treasurer; its place of business is in a building situated on the line between the States of Missouri and Kansas, and that defendants transact business partly in one state and partly in the other; that substantially all of the business transacted in the matter of receiving, buying, selling and handling live stock at the Kansas City Stock Yards is carried on by defendants, and other members of said exchange, as commission merchants; that a large proportion of such live stock is shipped from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, and Arkansas, and the Territories of Oklahoma, Arizona and New Mexico, and is sold by the defendants to the various packing houses in Kansas City, Missouri, and Kansas, and also for shipment to other
425 markets; that a vast number of live stock is thus annually received and sold; that said Kansas City market is a public market, and supplies a large number of packing houses in Kansas City, Kansas, and Kansas City, Mo., and other cities in different states of the Union; that the Kansas City market, next to Chicago, is the largest live stock market in the world; that under the practice and custom at said yards the live stock there received is delivered to commission merchants who receive, handle, sell or reship the same for the consignors and owners thereof to other states and territories, charging a commission for their services; that in the course of business at said yards said stock is moved and shifted from one state to the other according to the convenience of said Kansas City Stock Yards Company; that a large portion of said stock is incumbered by mortgages, executed by the owners thereof to the defendants members of said exchange, who advance large sums of money to growers and owners of cattle to provide the means to feed and prepare it for the market; that when such cattle are ready for shipment, they are consigned to the defendants and others members of said Exchange, who have made such advancements, and the amount thereof, and interest, is deducted from the proceeds of sale; that ninety per cent of the members of said Exchange make such advancements; that said stock yards accord to owners and shippers of live stock, the only available means at that place for hand-

ling, selling, and reshipping live stock; that by reason of its situation, said Kansas City Stock Yards are the only available public market for the purchase and sale of live stock for an exceedingly large territory of the United States, and the only available means for the exchange of interstate traffic between the states and territories named, the stock being sold in said yards to be shipped to other states of the Union; that it is the custom among a large number of cattle growers and shippers who consign live stock to the Kansas City Stock Yards, to draw drafts on the commission merchants to whom such stock is consigned and attaching the bill of lading issued by
426 the carrier therefor, to draw money on said drafts from local banks, and when presented to the consignees, said drafts are paid by them in Kansas and Missouri, and the proceeds remitted to the banks in the various towns and cities where the live stock was shipped; that by reason of the fact that said yards are in the States of Missouri and Kansas, and the live stock handled and sold therein is at times in Kansas, and at others in Missouri, and are transported from different states to be sold and shipped to other states; that said business is interstate in character, and can only be controlled by federal legislation, as a part of commerce between the states. The bill further charges that if the person or partnership to whom live stock is consigned at Kansas City is not a member of said exchange, he is not permitted to sell or dispose of such live stock on the Kansas City market, for the reason that the defendants, and all other commission merchants doing and controlling the business at said yards are required by the rules of said Exchange to refuse to buy live stock, or in any manner deal with a person who is not a member of said Exchange, and in all such cases the owner of the live stock is compelled to reship the same to some other market, and by reason of said unlawful combination, is prevented from delivering said live stock to the Kansas City Stock Yards, and the sale of the same is thereby hindered and delayed, extra expense and loss entailed to the shipper, and an obstruction placed upon the marketing of such live stock. That among other rules for the government of said Exchange, are the following:

"Rule IX. Commissions.

"Section 1. The commissions charged by members of this Association for selling live stock shall not be less than the following named rates:

Sec. 2. Six dollars per car load for single-deck car loads of hogs or sheep, and ten dollars per car load for double-deck

car loads of the same: Provided, members of this Exchange may, after charging commissions as above provided, pay a regular sheep salesman on these yards a sum of money contingent on number of sheep sold. Said sheep salesman may be in the employ of other members of the Exchange.

427 Sec. 3. Fifty cents per head for cattle of all ages. In carloads of twenty-four or more, not more than twelve dollars per carload; ten dollars per single-deck carload, and eighteen dollars per double-deck carload of veal calves.

Sec. 4. Fifty cents per head for cattle and twenty-five cents per head for calves and ten cents per head for hogs and sheep in mixed carloads, but not to exceed twelve dollars per carload. Fifty cents per head for cattle and twenty-five cents per head for calves driven into the yards, and ten cents per head for hogs and sheep, for sixty head or less; more than that number shall be charged for at carload rates.

Sec. 5. Fifty cents per head for buying cattle for stockers or feeders: Provided, such charges shall not exceed twelve dollars per carload; six dollars per single deck carload for buying sheep and ten dollars per double-deck carload. All purchases paid for by a commission house or shipping clearance made by same shall be deemed a purchase and charged for as above provided.

Sec. 6. Not less than four dollars per single-deck and five dollars per double-deck carload for buying live hogs, and not less than three cents per head for hogs bought by the head.

Sec. 7. No member or commission firm or corpoation represented herein shall do business for a yard trader or speculator on this market for less charges than one-half the regular commission.

Sec. 8. No firm shall handle the business of a non-resident commission house for less than full commissions, except said consignments be made direct to said non-resident commission house from one of the following named markets: Chicago, Ill.; East St. Louis, Ill.; St. Louis, Mo.; Omaha, Nebraska; Wichita, Kas.; Denver Col.; Pueblo, Col.; St. Joseph, Mo.; Sioux City; Ia.; Peoria, Ill.; Milwaukee, Wis.; and Ft. Worth, Texas.

Sec. 9. No member of this Exchange or firm or corporation represented herein shall cause or allow to be shipped in his or its name any kind of live stock for the purpose of violating any of the provisions of this rule.

Sec. 10. No agent, solicitor, or employe, shall be hired except upon a stipulated salary not contingent upon commissions

earned (save as provided in section 2 of this rule). No solicitor shall be employed except as a bona fide traveling agent, who shall not solicit consignments local to his own neighborhood only nor to secure his individual trade. Nor shall any agent, solicitor or employe, be hired who is employed by any other party or parties, or who is actively engaged in other business (save as provided in section 2 of this rule). Members of this Exchange must file with the Secretary within five days of employment, the names and addresses of their solicitors. More than three solicitors shall not be employed at one time by a commission firm or corporation. Members of a commission firm or corporation—resident or non-resident of Kansas City—may travel as solicitors but must be registered as one of the three allowed each firm or corporation. It shall be a violation of this rule for any solicitor representing or claiming to represent a commission firm or corporation in any other market, to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

Sec. 11. Any member of this Association or firm or corporation represented herein, sending or causing to be sent a prepaid telegram or telephone message quoting the market, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine be not paid within three days, said firm or member shall be suspended until said fine is paid: Provided, however, that prepaid messages may be sent to shippers quoting actual sales of their stock on the day made; also to parties desiring to make purchases on this market.

428 Sec. 12. Any member of this Exchange or firm or corporation in which he may be a partner, violating any of the provisions of this rule, shall be fined not less than $500, nor more than $1,000, for the first offense; if said fine be not paid within three days, said member or firm may be suspended from membership until same is paid. For a second offense, said member or firm may be expelled from membership in the Exchange.

Sec. 13. From such fines and special assessments, the Exchange shall pay a reward of $500 to any party or parties furnishing sufficient evidence to convict any member of a violation of any of the provisions of this rule, and said reward shall be paid immediately after conviction.

Sec. 14. For the purpose of making effective section 12 of this rule, when the treasurer shall not have on hand from fines collected the sum of $500, the directors shall levy a special

assessment, pro rata, on each commission firm or corporation buying or selling live stock in this market who is a member of the Exchange, and they shall continue to levy such special assessments in such amounts as will keep a fund of $500 constantly on hand for this purpose. Said fund shall be kept as a special fund and shall be used for no other purpose.

Sec. 15. Each firm or corporation represented in this Exchange shall be held responsible for any violation of this rule by any party doing any portion of a commission business in its name, and any penalty imposed for violation of the foregoing shall be on account of such party; if not paid within three days, the firm or corporation doing said business shall sever its business connections with such party within ten days. No firm or corporation shall thereafter do any business for such party until said fine is paid.

"Rule XVI. Limitations."

Section 1. No member of the Kansas City Live Stock Exchange shall transact any business with any person violating any of the rules or regulations of this Exchange, or an expelled or suspended member, after notice of such violation, suspension or expulsion, has been issued by the Secretary or Board of Directors of the Exchange."

The bill further charges that the defendants by the adoption of said articles of association have confederated and conspired together in violation of the laws of the United States, and particularly of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and to monopolize the business of buying and selling live stock at the Kansas City market, and to illegally fix and establish a minimum price for buying and selling the same, and have further in restraint of trade and commerce between the states confederated together to prevent and restrain the free transmission of information regarding the state of the market by telegraphic messages, and have restricted the free employment of agents and solicitors in the prosecution of business at said stock yards; that the purpose of defendants in organizing said Exchange is to prevent the shipment of any live stock to the Kansas City
429 market unless shipped to the Kansas City Stock Yards, and to defendants or other members of said Exchange, and the further purpose was to compel shippers to pay to defendants and their associates the commissions provided for in rule 9, and to prevent the shipment and sale of property on said market unless such commissions were so paid.

The bill further charges that it was also the purpose of said defendants and their associates to monopolize the business of

receiving, handling and selling live stock received at said market, and also to prevent its sale by any person not a member of said Exchange, and to obstruct and retard the owners of such live stock in the sale of the same on the market at Kansas City. Thereupon, the complainant prays for a decree dissolving said Exchange, and for an injunction against said defendants restraining them from enforcing or acting pursuant to the rules and by-laws of said Association.

The defendants for answer to said bill admit the organization of said defendants into an Association known as the Kansas City Live Stock Exchange, and aver that similar associations under the names of Boards of Trade or exchanges exist in practically every city of importance in the United States, devoted to the buying and selling of stock, bonds, grain, live stock, petroleum and all other products, with similar rules for government and transaction of business in order that competition between the members may be fair and reasonable; that said methods are sanctioned by the experience of the commercial world, and tend to develop trade and commerce, and not to restrict the same. The preamble of their organization is as follows:

"We, the undersigned, for the purpose of organizing and maintaining a business Exchange, not for pecuniary profit or gain, nor for the transaction of business, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to promulgate and enforce amongst the members correct and high moral principles in the transaction of business, have associated ourselves together under the name of Kansas City Live Stock Exchange, and hereby agree each with the other, that we will faithfully observe and be bound by the following rules and by-
laws, and such new rules, additions or amendments as
430 may from time to time be adopted in conformity with
the provisions thereof, from the date of organization, by the election of a Board of Directors and other officers as prescribed by Rule 1."

The defendants deny that through their membership substantially all of the business of buying and selling live stock at Kansas City is carried on; on the contrary, any person desiring to sell live stock at said city is under no obligation to employ a commission merchant, but is at full liberty to act for himself, and the stock yards company extends to such person all the privileges and facilities afforded by it, and persons desiring to purchase live stock at the yards may, and they constantly do, purchase direct from the owners, and that very much the largest part of the cattle purchased for feeding are bought without the employment of any commission merchant;

the only restriction upon members of the Exchange is that contained in rule 16, viz: that they will not deal with a person as a commission merchant who violates the rules of the Exchange, or who is a suspended or expelled member thereof.

It is further averred that the Kansas City market is not a public market, but is of a private character merely; defendants further aver that with the exception of the firm of Greer, Mills & Company, which was first suspended from membership in the Exchange for non-payment of a fine imposed for a violation of the rules thereof, and which subsequently voluntarily withdrew from said Exchange, all of the commission merchants at said yards are members of the Exchange. Defendants further aver that whenever drafts are drawn on a commission merchant, they are paid either at the place where payable by the terms thereof, or on presentation to the drawee, and that such place of payment is either in the state of Kansas or Missouri, according as the particular transaction is closed.

Defendants are informed by counsel and believe that the exercising of their occupation is not commerce between the states within the meaning of the constitution or laws of the United States; that it is not true that a consignor of live stock is not permitted or cannot sell the same at said yards, or
431 that the members of said Exchange refuse to deal with a non-member thereof; it is not true that any person shipping live stock to said yards and refusing to employ a member of said Exchange is compelled to re-ship the same to some other market; defendants deny that there is any unlawful combination among them or that any person is prevented from delivering stock to the Kansas City stock yards, or that the sale thereof is hindered or delayed, or expense or loss to the shipper entailed, or any obstruction or embargo placed upon the marketing of any live stock; defendants deny that any of the rules of said Association are in restraint of commerce between the states, or otherwise; defendants deny that they have confederated together in violation of the laws of the United States to monopolize the business of buying and selling live stock at said yards, or to illegally fix a minimum price for buying and selling such live stock, or to restrain the free transmission of information respecting the State of the Kansas City market by telegraphic messages, or restrict the free employment of agents or solicitors in said business; that experience has shown that to the success of such an organization, it is absolutely essential that there should be a uniform schedule of commissions, and that all members should observe the same, and that by permitting evasions or violations of such schedule, a condition is created by which irresponsible per-

sons might and would bring about a state of unhealthy cutting of prices, a practice unfair to shippers and purchasers and ruinous to responsible persons who carry on the occupation of commission merchants fairly; they have no desire to prevent any person from acting as a commission merchant at Kansas City, but they admit that it is not to the interest of the public or shippers to employ non members, and that individually and collectively the provisions of their articles of association are invoked for the purpose of preventing the success of any competitor, either in his efforts to destroy said Exchange, or to succeed in driving the competitors of such parties from the field.

The act of Congress of July 2, 1890 (26 Stat. 209), un-
432 der which this proceeding is brought, provides as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in [restraining] of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal." .....

"Sec. 2. Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor." .....

Section 4 gives to Circuit Courts of the United States jurisdiction to prevent and restrain violations of the act, and makes it the duty of the District Attorney, under directions of the Attorney General, to institute proceedings in equity to restrain such violations.

W. C. Perry, U. S. Attorney, for the complainant.

Karnes, Holmes & Krauthoff, McGrew, Watson & Watson, and Hutchings & Keplinger, for the defendants.

Foster, J. It will be observed that the answer of the defendants denies and puts in issue, the allegations of the bill charging a combination or conspiracy or contract in restraint of trade or commerce, and denies any monopoly or attempt to monopolize, or combination to monopolize any part of the trade or commerce among the several states, and denies that the business for which the Exchange was organized, and in which its members are engaged, comes under the class of commerce or trade among the states.

The first question, whether there is any combination in restraint of trade or commerce or combination to monopolize any

part of trade or commerce, on the part of the defendant association, is to be determined, not alone from what appears upon the face of its preamble, rules and by-laws, but from the entire situation, and the practical working and results of the
433 defendants' methods of doing business as disclosed by the testimony in the case. The defendant association is located at Kansas City on the line between Kansas and Missouri, in the immediate vicinity of the Kansas City Stock Yards, and in close association therewith, being tenants of said stock yards company. Said yards, with perhaps the exception of the yards at Chicago, are the largest in the country, and handle great numbers of live stock. These yards, the packing houses, and this Exchange, are all situated at the gateway through which flows the great stream of commerce of several states and territories, and among all the business tributary to this locality, probably none is as important as the live stock business, and the various industries connected therewith. The defendant association is entirely voluntary in form, and does not directly require any person engaging in the live stock commission business to become a member, but it will be observed that rule 16 prohibits any member from dealing with any person violating any of the rules or regulations of the Exchange, or an expelled or suspended member after notice of such suspension has been issued by the secretary or Board of Directors. In practice, as amply appears from the testimony of many witnesses, this rule shuts out all dealings and business intercourse between members and non-members of the association. It is shown beyond cavil that the entire membership of the association regards a commission merchant attempting to do business at the Kansas City Stock Yards without joining the Exchange as one violating this rule, and treat him accordingly. And this construction is a natural one, for a compliance with the rules of the Exchange requires a party to subscribe to its rules and by-laws, and to pay a membership fee, which is now $2500; to pay his assessments and observe all other requirements, including the fees and commissions fixed for handling live stock, and it may well be said that any dealer or broker does business in violation of these rules who does business at all and
434 fails to join the association. The testimony discloses several instances of parties attempting to enter the field and do business there without joining the Exchange, and in every instance, unless protected by the courts, they have been compelled to abandon the undertaking. All parties now engaged in the business are members of the Exchange except Greer, Mills & Company, who are making a fight in the courts to maintain their business, and are temporarily protected by injunction. It appears from the testimony that any

person or partnership attempting to carry on business independent of the association, is invited to apply for membership, and if he fails to do so, or if rejected, and attempts to proceed, his name is written on a blackboard kept for public use in the Exchange Building, and all members are warned against dealing with him. This admonition is strictly obeyed, and such person is boycotted. The outcome is inevitable; the combined opposition of three hundred men against one can produce but one result. Almost every purchaser or vendor of live stock including the great packing houses, does business through commission merchants, and nearly the entire volume of live stock received at the yards is consigned to and controlled by these merchants, members of the Exchange. In vain does the outside dealer offer attractive bargains for the sale or purchase of stock; they will have no intercourse with him. This state of affairs is known and circulated among stock growers and shippers, and they dare not ship their stock to this boycotted broker or firm. These facts are established and amplified by a multitude of witnesses. The object and purpose of the Exchange is written across its face, where all can read; it is to control and monopolize the entire business of buying and selling live stock at the Kansas City Stock Yards. It is clearly a combination to restrict, control and monopolize that class of trade and commence. The defendants declare that the rules regulations and prices for doing the business are all reasonable and fair and for the best interests of buyer and seller. Possibly that is so, although it is not apparent, looking at the interests of the stock grower or purchaser, why the number of solicitors of business should be limited to
435 three for each firm, or why there should be a restriction on telegraphic information as to the state of the market, or why he should be compelled to pay a commission of fifty cents a head on cattle when he paid twenty-five cents before the Exchange was organized, or why there should be discriminating charges on stock from different localities.

Counsel for defendants have, with commendable zeal and industry, submitted for our consideration, the rules of a great number of exchanges and boards of trade throughout the cities of the United States, dealing in corporate stocks, grains, live stock and various other things, and contend that they are essential, if not indispensable, to the commerce and business interests of the country, and that to grant the prayer of this bill, would be the death-blow of those institutions. Courts cannot shut their eyes to the results of their judicial conclusions, but how far such results should control those conclusions depends on several conditions not necessary to discuss

here; nor would it be proper to consider here what effect this act of Congress may have on these organizations, or any of them. I may be permitted to say, however, that the methods and aims of many of these Exchanges and Boards of Trade are not altogether beneficial to the business and commerce of the country; that they are beneficial to the members, and perhaps to the locality, may be admitted; it must also be admitted that a properly conducted agency or medium through which the vendor and vendee may readily sell and buy everything that enters into commerce or trade is demanded by the business interests of the whole country; but this agency should not be permitted to tamper with or in any way impede or restrain the natural flow of the stream of industry or commerce. The crying complaint of to-day, and the great menace to the welfare of the people is the tendency of wealth to monopolize and control by trusts and combinations, the products and industries of the country; and it must be confessed by every thoughtful observer that many of the so-called stock and produce
436 exhanges are among the most potent instruments for the accomplishment of these purposes by speculators and adventurers. Men who add nothing to the productive wealth of the country grow rich or poor by gambling on the wealth produced by others. Men are daily selling through these exchanges millions of bushels of corn, wheat and other produce, who neither have nor expect to have a bushel, and others are buying millions who never expect to receive a bushel. Both sides are tampering with the normal prices fixed by the law of supply and demand, and attempting by false and dishonest means and methods to serve their ends. The courts have uniformly condemned this class of business as illegal, and though it is under the ban of the law, it still flourishes. The remedy must be looked for in legislation, and not in the courts alone.

This act of Congress is aimed against all restrictions of interstate commerce, and we need not discuss the reasonableness of such restrictions. It is evidently the purpose of the law to permit commerce between the states to flow in its natural channels, unrestricted by any combinations, contracts or conspiracies, or monopolies whatsoever.

United States vs. Trans-Missouri Freight Assn. 166 U. S. 290.
United States vs. Knight Company, 156 U. S. 1.
Leisey v. Hardin, 135 U. S. 107.
Walling v. Michigan, 116 U. S. 454.
Robbins v. Taxing District, 120 U. S. 490.

But one material question remains in the case: Is the business in which the defendants are engaged, commerce between

the States? The circumstance that their place of business is located on both sides of the line between the states of Kansas and Missouri is, in my opinion, a fact of no material importance in the solution of this question—no more than would be the fact that the business of a farmer or manufacturer was so located, and that he passed from one state to the other for his convenience in the transaction of his usual business.

437 The method of business of the defendants is as follows: The shipment of live stock from growers, dealers and traders in Kansas, Colorado, Nebraska, [Missouri], Texas, Missouri, New Mexico, Arizona, Oklahoma and other states and territories, is solicited by the commission merchant in various ways, but largely by the personal solicitation of agents who travel about the country and interview the stock men. Frequently the commission man makes loans of money on the herds, secured by chattel mortgage. The consignment of the stock is made to the commission man or firm at the Kansas City Stock Yards, and there unloaded; frequently the shipperdraws on the consignee through his local bank with the bill of shipment attached, and when the stock is sold, the loan on the cattle, or the draft on the consignee, as the case may be, is paid out of the proceeds, and the balance remitted to the shipper. While the broker is soliciting consignments of stock for sale, he is also on the alert for purchasers; he sells the stock without regard to its destination; some is re-shipped to other markets in other states, notably to Chicago and St. Louis; much of it, especially hogs, is slaughtered at the large packing houses near by in Kansas and Missouri. Is this business so conducted, interstate commerce, or merely an incident or aid to such commerce? Commerce among the States has been defined as follows:

"Commerce with foreign countries, and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities."

Mobile v. Kimball, 102 U. S. 691.
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196.

In re Green, 52 Fed. Rep, 113, Judge Jackson says: "In the application of this comprehensive definition, it is settled by the decisions of the Supreme Court that such commerce includes, not only the actual transportation of commodities and persons between the states, but also the instrumentalities and processes of such transportation; that it includes all the negotiations and contracts which have for their object, or involve as

an element thereof, such transmission or passage from one state to another."

438 In U. S. v. Knight Co., 156 U. S. 13, Mr. Chief Justice Fuller, speaking for the Court, says:

"The regulation of commerce applies to the subjects of commerce, and not to matters of internal police. Contracts to buy, sell or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold or exchanged for the purpose of such transit among the states, or put in the way of such transit, may be regulated, but this is because they form part of interstate trade or commerce."

It has been repeatedly held by the Supreme Court that a person soliciting orders for goods or freights to be shipped from one state to another, and express agents transporting goods from state to state, are engaged in commerce between the states, and a local tax or license cannot be imposed for transacting such business.

Walling v. Michigan, 116 U. S. 446.
Pickard v. Pullman Car Co. 117 U. S. 34.
Robbins v. Taxing District, 120 U. S. 489.
Asher v. Texas, 128 U. S. 129.
McCall v. California, 136 U. S. 104.
Railroad Co. v. Pennsylvania, 136 U. S. 114.
Crutcher v. Kentucky, 141 U. S. 47.
Brennan v. Titusville, 153 U. S. 289.
Minnesota v. Barber, 136 U. S. 313.

It has also been held that telegraphy between the states is interstate commerce.

Leloup v. Port of Mobile, 127 U. S. 640.
Telegraph Co. v. Telegraph Co. 96 U. S. 1.
Telegraph Co. v. Texas, 105 U. S. 460.

The question of what constitutes commerce between the states, and thus protected by the constitution, and that which is merely an incident or aid to such commerce, and exempt from federal control, has been much considered by the federal courts, and sometimes the line of distinction is difficult of discernment. Having a watchful regard for the police
439 powers of the states, and the right of taxation, the federal courts have carefully discriminated in these cases so that the general government should take nothing to itself not fairly delegated by the constitution.

Nathan v. Louisiana, 8 How. 73.
Crutcher v. Kentucky, 141 U. S. 47.

Budd v. New York, 143 U. S. 517.
Kidd v. Pearson, 128 U. S. 1-20.
United States v. Knight Co. 156 U. S. 1.
Munn v. Illinois, 94 U. S. 113.
In re Green, 52 Fed. Rep. 113.
Henderson v. Mayor, 92 U. S. 259.
Covington Bridge Co. v. Kentucky, 154 U. S. 204.
Henderson Bridge Co. v. Kentucky, 166 U. S. 150.

Perhaps a fair test of the character of defendants' rules and by-laws would be presented by these questions: Could a state by legislation, impose on this traffic, the restrictions and regulations demanded by these rules and by-laws; could it limit the number of agents a merchant should have soliciting business in other states; could it restrain telegraphic communication between points in different states; could it make a discrimination in rates for handling stock shipped from different localities outside of the State? It is indisputable that all the live stock shipped to these defendants for sale from states other than Kansas and Missouri after it has entered the current of commerce between the States, continue and remain subjects of such commerce until the transportation is terminated and the property becomes a part of the general property of the state. It is also well settled that while this property is the subject of interstate commerce, no state, municipality or other power but Congress can impose taxes, restrictions
440 or regulations upon it, except so far as is proper in the exercise of police regulations for the protection of the health, morals and person of the citizen, and except for proper charges and regulations for the use of local instruments as aids or incidents to such commerce, such as docks, bridges, wharves, elevators, ferries, pilotage, etc., when Congress has not acted in the matter.

In the case of Bowman v. Chicago etc. Rld. Co. 125 U. S. at page 497, Mr. Justice Matthews lays down this principle in the following language:

"It is also an established principle, as already indicated, that the only way in which commerce between the states can be legitimately affected by state laws, is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a state provides for the security of the lives, limbs, health and comfort of persons, and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and

commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the state or belonging to its population, and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce, or with some other employment or business exercised under authority of the constitution and laws of the United States; and the imposition of taxes upon all property within the state mingled with and forming part of the great mass of property therein. But in making such internal regulations, a state cannot impose taxes upon persons passing through the state, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the state from abroad, or from another state, and not yet become a part of the common mass of property therein; and no discrimination can be made by any such regulations adversely to the persons or property of other states; and no regulations can be made directly affecting interstate commerce."

Bowman v. Chicago, etc., Rly. Co., 125 U. S. 465.
License Cases, 5 How. 504.
Passenger Cases, 7 How. 283.
Nathan v. Louisiana, 8 How. 73.
Freight Tax Case, 15 Wall. 232.
Leisey v. Hardin, 135 U. S. 100 (Original Package Case).
Henderson v. Mayor, 92 U. S. 259.
441 Bridge Co. v. Louisville Ry. Co., 37 Fed. Rep. 567.
Guy v. Baltimore, 100 U. S. 434.
Railway Company v. Becker, 32 Fed. Rep. 849.
Plumley v. Massachusetts, 155 U. S. 461.
Covington Bridge Co. v. Kentucky, 154 U. S. 204.
United States v. Pipe Co., 78 Fed. Rep. 712.
Packet Co. v. Keokuk, 95 U. S. 80 (Wharfage).
Welton v. Missouri, 91 U. S. 275.
Walling v. Michigan, 116 U. S. 446.
Coal Co. v. Bates, 156 U. S. 577.
In re Rahrer, 140 U. S. 545.
In re Minor, 69 Fed. Rep. 333.
Scott v. Donald, 165 U. S. 58.
Coal Co. v. Louisiana, 156 U. S. 590.
Hooper v. California, 155 U. S. 648.
Emert v. Missouri, 156 U. S. 296.

Counsel for defendants contend that their business is only an aid or incident to commerce, something in the nature of personal service, but it is not apparent that a combination for

services may not be a restraint or monopoly of commerce under the act of Congress.

United Stats v. Trans-Missouri Freight Assn., 166 U. S. 312.

But the business of defendants is more than personal services; it is not merely a local instrumentality in aid of commerce. Defendants are active promoters, and frequently interested parties in this immense traffic; they reach out over many states and territories by their solicitors and advertisements, and gather in for sale and slaughter, millions of cattle, sheep and hogs, and their rules and regulations cover the entire business, and extend over the whole field of operation.

442 Touching the question of what are aids or incidents to commerce, as well as police powers of the states, the following cases are in point:

Packet Co. v. St. Louis, 100 U. S. 423.
Vicksburg v. Tobin, 100 U. S. 430.
Packet Co. vs. Catlettsburg, 105 U. S. 559.
Transportation Co. v. Parkersburg, 107 U. S. 691.
Ferry Co. v. Pennsylvania, 114 U. S. 196.
Heise v. Glover, 119 U. S. 543.
Hall v. DeCuir, 93 U. S. 485.
Colley v. Board of Wardens, 12 How. 298.
Packet Co. v. Aiken, 121 U. S. 444.
Sands v. Manistee Imp. Co., 123 U. S. 288.
Navigation Co. v. U. S., 148 U. S. 312.
St. Louis v. Tel. Co., 148 U. S. 92.
Munn v. Illinois, 94 U. S. 113.
Budd v. New York, 143 U. S. 517.
Erie Ry. Co. v. Pennsylvania, 158 U. S. 431.
Henderson Bridge Co. v. Kentucky, 166 U. S. 150.

The defendants further contend that when this live stock reaches Kansas City, and is unloaded into the stock yards, it ceases to be the subject of interstate commerce. This proposition however, covers but one point in the controversy, for several of the rules and by-laws of defendants have more than a local operation, and extend beyond state lines.

Does this stock once upon the stream of commerce, cease to be such, when unloaded at Kansas City? Could the state of Kansas tax these cattle in the stock yards?

The defendants cite the case of Brown v. Huston, 114
443 U. S. 623, and Pittsburg Coal Co. v. Bates, 156 U. S. 577. In the former case, the coal which was subjected to taxation had reached its destination, i. e., the state of Louisiana, and was there offered for sale in great or small quantities to suit the purchaser. The Court says:

"It might continue in that condition for a year or two years, or for only a day * * * *

"We do not mean to say that if a tax collector should be stationed at every ferry and railroad depot in the city of New York, charged with the duty of collecting a tax on every wagon load or car load of produce or merchandise brought into the city, that it would not be a regulation of, and restraint upon, interstate commerce, so far as the tax should be imposed on articles brought from other states. We think it would be, and that it would be an encroachment upon the exclusive power of Congress."

Bearing upon this question, is the case of Brown v. Maryland, 12 Wheat. 419; also Leisey v. Hardin, 135 U. S. 108.

In this case, Mr. Chief Justice Fuller, speaking for the Court, says:

"That the point of time when the prohibition ceases, and the power of the state to tax commerce, is not the instant when the article enters the country, but when the importer has so acted upon it, that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between a tax which intercepts the import as an import on its way to become incorporated with the general mass of property, and a tax which finds the article already incorporated with that mass by the act of the importer."

This live stock is shipped from different states for immediate sale, and if the market at Kansas City is not satisfactory, it is to be shipped to another market. I cannot believe it ceases to be the subject of interstate commerce when unloaded into the stock yards. Sections 4386 and 4387 of the Revised Statutes humanely prohibits any railroad company whose road form any part of a line over which animals are conveyed from one state to another, from confining them in cars over twenty-eight consecutive hours without unloading them for rest, water and food for at least five consecutive hours.

444 Under the act of Congress of May 29, 1884, establishing a Bureau of Animal Industry, and the act of March 3, 1891, for the inspection of live cattle, hogs, etc., the general government has established inspectors at the Kansas City stock yards, assuming that such stock comes within the purview of said acts of Congress. While realizing the importance of the issue involved in this case, and the responsibility of making application of the Anti-Trust Act to a new order of facts, I am impelled to the conclusion that, under the

facts and the law applicable thereto, the prayer of this bill should be granted.

CASSIUS G. FOSTER, Judge.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Opinion. Filed Sept. 20th, 1897. Geo. F. Sharitt, Clerk.

445 In the Circuit Court of the United States in and for the District of Kansas, First Division.

The United States of America, Complainant,
No. 7402. vs. In Equity.
Henry Hopkins, A. Isaacson, F. X. Jardon, J. T. Kiely, A. J. Knollin, W. L. Ladd, T. F. McDonald, J. W. Orlander, M. S. Peters, O. C. Peters, Gilman Reed, E. E. Richardson, W. A. Rogers, J. K. Southee, J. M. Sweeney, Henry Theis, E. E. Trowbridge, Harry Trower, O. B. Trower, S. R. Trower, Wm. Winder, R. H. Wise, L. M. Egan, Fred. Ehrke, W. F. Grant, W. S. Hannah, J. H. Clotfelter, T. E. Ladd and Woodson McCoy and others, Defendants.

This cause having heretofore been heard and submitted on the bill of complaint, affidavits, proofs, arguments and briefs of the respective counsel, on application for a temporary injunction pendente lite and the court being now fully advised in the premises, doth find that, on the bill, affidavits and proofs submitted, the application for a temporary restraining order and prohibition herein should be granted.

It is therefore ordered and decreed by the Court, until the final hearing and decree on the merits and until the further order and decree of the Court, that the defendants herein, and each and every one of them, their agents, servants and employes, be and they are hereby enjoined, either as associates in the Kansas City Live Stock Exchange or otherwise, from combining, by contract, agreement or understanding, express or implied, so as by their acts, conduct or words to interfere with, hinder or impede others in shipping, trading, selling or buying live stock that is received from the states and territories at what is known as the stock yards at Kansas City, Missouri, and Kansas City, Kansas, and shipped there from other states and territories for sale there or for further transportation or for sale in or shipment to foreign markets.

And it is further ordered and decreed that the said defendants either collectively as such Kansas City Live Stock Exchange or through its Board of Directors, or otherwise, and

each of them, their agents, servants or employes, be and
446 they are hereby enjoined from enforcing or recognizing or acting under the following rules of said Kansas City Live Stock Exchange, to wit, Rules 9 and 16, each and every section thereof, and any and all amendments thereto in respect to such live stock, and from imposing or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange, for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such live stock; or from discriminating in favor of any member of said Kansas City Live Stock Exchange, because of such membership; and especially from in any manner discriminating against any person trading at said stock yards in such live stock, and from refusing, by united or concerted action, or by word, persuasion, threat or other means, to deal or trade with persons with respect to such live stock who are not members of said association, because of such non-membership; or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such live stock at said stock yards and the same as if such Kansas City Live Stock Exchange did not exist.

And it is further ordered and decreed that the defendants, and each of them, their servants, agents and employes, be and they are hereby [joined] and prohibited from entering into any contract, agreement, combination or conspiracy fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock, shipped from one state or territory for sale or disposition in another state or territory or in foreign countries, also from entering into any contract, agreement, combination or conspiracy limiting or attempting to limit the right of any person in business at said Kansas City stock yards to employ labor or assistance in soliciting shipments of live stock from other states or territories, or the right of any such person to send telegrams prepaid or not from said stock yards to any other state or territory.

And thereupon come all of the said defendants and join in praying an appeal from the foregoing order of temporary in-
junction to the United States Circuit Court of Appeals
447 for the Eighth Circuit and file their application accordingly, accompanied by their assignment of errors. Upon consideration of the premises, it is ordered that said appeal be and the same is hereby granted, returnable thirty days from this date; and it is further ordered that a good and sufficient supersedeas bond shall be filed herein, in the penal sum of ten thousand (10,000) dollars. Said bond was thereupon presented and approved. It is further ordered that the said ap-

peal shall have the effect to suspend, supersede and stay the force and effect of said order of temporary injunction, and any and all further proceedings herein, including the taking of testimony, until the final determination of this cause in the appellate courts. Thereupon comes the complainant and, in open court, waives the issuance, signing and service of a citation herein, and acknowledges to have received and to be charged with all the force and effect of the proper issuance, signing and service of a formal citation.

CASSIUS G. FOSTER, Judge.

Indorsed: No. 7402. Injunction Order. Filed Sept. 20, 1897. Geo. F. Sharitt, Clerk.

448 In the Circuit Court of the United States for the District of Kansas, First Division.

United States, Complainant and Appellee,
v. In Equity.
Henry Hopkins et al., members of the Kansas City Live Stock Exchange, Defendants and Appellants.

ASSIGNMENT OF ERRORS.

In company with the application for an appeal from the order of temporary injunction heretofore entered herein, the said defendants and appellants do hereby assign the following errors in the record and proceedings herein, and in the making of said order of temporary injunction:

1. The Court erred in granting a temporary injunction herein.

2. The Court erred in holding that the contract between the defendants, evidenced by the Articles of Association, Rules and Regulations of the Kansas City Live Stock Exchange, constituted a contract in restraint of trade or commerce within the meaning of the act of Congress of July 2, 1890.

3. The Court erred in holding that the association of the defendants under the name of Kansas City Live Stock Exchange constituted a combination in restraint of trade or commerce within the meaning of the act of Congress of July 2, 1890.

4. The Court erred in holding that the defendants had been or were guilty of a conspiracy in restraint of trade or commerce within the meaning of the act of Congress of July 2, 1890.

5. The Court erred in holding that the defendants, or the Exchange of which they were members, had monopolized or

attempted to monopolize, or had combined or conspired with any other person or persons to monopolize, any part of
449 the trade or commerce among different states, within the meaning of the Act of Congress of July 2, 1890.

6. The temporary injunction awarded by the Court operates as a denial of the rights of the defendants under the Fifth Amendment to the Federal Constitution, in that it deprives them of their property and also of their liberty without due process of law.

7. As construed by the said Court, the Act of Congress of July 2, 1890, is in violation of the Fifth Amendment to the Federal Constitution, in that it operates as a "legislative judgment" and deprives the defendants of their property and liberty without due process of law, and denies to the defendants, being persons engaged in a purely private occupation, the right to contract with each other as to the terms upon which they are willing to serve persons desiring to employ them, and as to the manner in which their occupation as commission merchants shall be carried on, and as to the persons with whom they shall have business dealings; and said order also undertakes to control the free choice of the defendants in respect of the compensation for which they are to labor, the number of solicitors they are to employ, the sending of prepaid telegrams, and the persons with whom they are content to have business dealings.

8. The Court erred in enjoining the defendants, "either as associates in the Kansas City Live Stock Exchange or otherwise, from combining, by contract, agreement, or undertaking, express or implied, so as by their acts, conduct, or words, to interfere with, hinder or impede others in shipping, trading, selling or buying live stock that is received from the states and territories at what is known as the stock yards at Kansas City, Missouri, and Kansas City, Kansas, and shipped there from other states and territories, for sale there or for further transportation or to foreign markets," for that, a, there is no evidence to warrant a finding of such a purpose on behalf of the defendants, the allegations of the bill on the subject being conclusively shown to be false by the uncontradicted evidence in the case; b, acts, conduct or words which, as an effect
450 or consequence, interfere with, hinder or impede other persons, in distinction to force, violence, threats, intimidation or other similar means maliciously resorted to for the purpose of thus interfering with, hindering, or impeding others, are not in violation of the statute; c, acts, words or conduct having the effect to interfere with, hinder, or impede persons who are competitors of the defendants in their

occupation of commission merchants at said stock yards, do not constitute either a contract, or a combination, or a conspiracy in restraint of trade or commerce; and, d, live stock received at said stock yards from another state for sale there, does not constitute an article of interstate commerce, nor is it such because a subsequent purchaser thereof may intend to or actually [—] further transport it, even to foreign markets.

9. The Court erred in enjoining the defendants from enforcing, or recognizing or acting under rule IX of the Kansas City Live Stock Exchange, said rule embodying in all respects a voluntary and lawful contract between parties sui juris engaged in a private occupation, which the parties are at full and complete liberty to keep and perform if they desire to do so.

10. The Court erred in enjoining the defendants from enforcing or recognizing or acting under rule XVI of the Kansas City Live Stock Exchange, for that said rule is a lawful agreement, and to deny the right to make, keep and perform the same is in violation of the rights of the defendants under the Fifth Amendment to the Constitution of the United States.

11. The Court erred in enjoining the defendants from imposing or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such live stock, for that, a, it is the duty of such of the defendants as are officers and directors of said exchange, under the rules of said body fixing their respective duties, to enforce the
451 fines and penalties provided by said rules, against members found guilty of having violated the same, including the rule forbidding members to deal with expelled or suspended members or persons acting in violation of any of the rules of said exchange; b, no person can remain a member of said exchange and also violate the rules to which he has agreed; and c, the matter of the attitude of the defendants, or any of them, in respect of having business non-intercourse with another individual, cannot be redressed by an injunction nominally sued out by the United States, but, so far as a civil action is concerned, is one of mere private concern.

12. The Court erred in enjoining the defendants from discriminating in favor of any member of such exchange because of such membership, and from discriminating in any manner against any person trading at said stock yards, for that the defendants are entitled to full liberty in respect of the persons whom they will serve and with whom they will deal and of the reasons for their conclusions in the premises, and such liberty

cannot constitutionally be destroyed, either by legislative enactment or by injunction.

13. The Court erred in enjoining the defendants from refusing, by united or concerted action, or by word, persuasion, threat or other means, to deal or trade with persons with respect to such live stock who are not members of said Kansas City Live Stock Exchange, because of such non-membership, for that, a, the defendants have a right to organize and maintain an exchange, and to confine its privileges to members thereof; b, they also have the right, singly or in concert, to serve or to deal or not to deal with any other person or persons, as they may elect or agree, for any reason satisfactory to themselves, or without any reason whatever; c, there is no evidence of the use of any "threat" by the defendants, or either of them, in the premises; d, a refusal to deal, evidenced only by word, persuasion or other means not unlawful, cannot be enjoined; and, e, obedience by members of said exchange to the rules they have contracted to observe cannot be lawfully enjoined, nor can members of an exchange be permitted to break such contractual rules and, nevertheless, be permitted to enjoy all the benefits and privileges of membership in such exchange.

14. The Court erred in enjoining the defendants from
452 interfering with the right and freedom of any and all persons trading and desiring to trade in such live stock at said stock yards the same as if such Kansas City Live Stock Exchange did not exist, for that, there is no evidence that said defendants at any time undertook to regulate or control the conduct of any person whatsoever in respect of dealings at said yards, except only the own members of said exchange, and that as to these the defendants merely insisted that if and so long as such members desired the privileges of such membership, they must abide by and observe the rules which constituted the contract between the parties.

15. The Court erred in enjoining the defendants from agreeing among themselves upon the prices to be charged by the members of said exchange as commissions for their services in acting as agents for others in buying or selling live stock shipped from one state or territory for sale or disposition in another state or territory, for that the right of persons engaged in a merely private occupation to agree upon a schedule of wages or commissions to be charged for their services and under which alone they are willing to serve, is not only not forbidden by statute, but could not constitutionally be taken away or impaired, nor can such parties, by force of an injunction or otherwise, be subjected to a condition of involuntary servitude by being compelled to serve for less than the commissions fixed by them, singly or by agreement among themselves.

16. The Court erred in enjoining the defendants from agreeing among themselves in respect of the employment of labor or assistance in soliciting shipments of live stock from other states or territories, and in reference to the sending of prepaid telegrams from the Kansas City stock yards to any other State or territory, these being matters of purely private concern, in respect of which the defendants are subject to no control at the hands either of Congress, or of a court, or of any person or tribunal whatever, and for that an agreement on said subjects, or either of them, is in nowise forbidden by the act of Congress of July 2, 1890, and such agreement could not
153 constitutionally be forbidden or annulled.

17. For centuries past, exchanges, such as that to which the defendants belong, have existed in every trade-center in the civilized world. They have been universally recognized and adjudged to constitute the most valuable aids to and promoters of trade or commerce which the ingenuity of mankind has been able to devise. They have always had the sanction and approval of state legislatures, as well as of Congress and of the executive departments of the Federal Government. Without them, trade and commerce could not be successfully carried on; endless confusion would result; wrongful practices would go unpunished; rebates and discriminations would be granted to the favored at the expense of the general public; and all the evils which have been remedied by the [conservating] influences of exchanges, boards of trade, clearing houses, and similar organizations would become prevalent, all to the injury of legitimate commerce. The Court erred in holding that it was the purpose of Congress, by the act of July 2, 1890, to strike down such organizations, to render valueless the many millions invested in certificates of membership therein, and to transform their members into conspiring criminals.

18. The Court erred in holding that the defendants were engaged in interstate commerce.

19. The Court erred in holding that the defendants, in anywise, restrained or monopolized, or were attempting to restrain or monopolize, interstate commerce or any part thereof.

20. The Court erred in not holding that the defending exchange was a mere aid to commerce, supplying facilities for its proper and convenient conduct, whose rules and operations, in so far as they affected such commerce at all, only did so indirectly and incidentally.

21. The Court erred in not holding that the effect of the rules and operations of the defending exchange upon commerce, instead of being injurious, was highly beneficial and deserving of sanction and commendation.

22. The Court erred in granting a temporary injunction under the circumstances of this case. The material
454 allegations of the bill of complaint stood denied by answer, to which no replication had been filed. If conflict there was in reference to any of the material facts, that conflict should not be determined on affidavits, especially as the defendants had no knowledge of the existence of the complainant's affidavits in rebuttal until the same were read at the hearing and without an opportunity to disprove them or to cross-examine the affiants. The case should have been ordered to stand for final hearing without an interlocutory order of injunction, particularly as no bond has been given by the complainant to reimburse the damages which might be inflicted on the defendants, and as such interlocutory order practically operates as a final disposition of the case.

23. The Court erred in not dismissing the bill as having been instigated and filed and as being prosecuted solely in a private interest and for the gratification of private malice and revenge, and the venting of private anger.

24. The Court erred in holding that the refusal of the defendants, or any of them, to deal with the firm of Greer, Mills & Company, or any other person, was a matter which could be litigated in an equitable proceeding brought in the name of the public.

25. There is no evidence to justify a conclusion that the public interests have been in anywise injured by any rule or act of the defendants, or that the United States are in anywise concerned in the rules and operations of the defending exchange, or in the matters mentioned in the order of temporary injunction.

Wherefore, the said defendants pray that the order of temporary injunction herein may be reversed and that the bill of complaint may be dismissed.

C. F. HUTCHINGS,
L. C. KRAUTHOFF,
Solicitors for Defendants and Appellants.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Assignment of errors. Filed Sept. 28, 1897. Geo. F. Sharitt, Clerk.

455 In the Circuit Court of the United States for the District of Kansas. First Division.

United States, Complainant,
vs. In Equity.
Henry Hopkins et al., members of the Kansas City Live Stock Exchange, Defendants.

The defendants in the above entitled cause, all of whom join in this application, conceiving themselves to be aggrieved by the order awarding a temporary injunction herein, do hereby appeal from said order to the United States Circuit Court of Appeals for the Eighth Circuit, and pray that their said appeal may be allowed and that the force and effect of said order may stand stayed, suspended and superseded until the final determination of this cause in the Appellate Courts, and that a transcript of the record and proceedings herein may be sent to said United States Circuit Court of Appeals. The said appellants present and file herewith their assignment of errors. present and file herewith their assignment of errors.

C. F. HUTCHINGS,
L. C. KRAUTHOFF,
Solicitors for the Defendants.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Application for appeal by defendants. Filed Sept. 28, 1897. Geo. F. Sharitt, Clerk.

456 In the Circuit Court of the United States for the District of Kansas. First Division.

United States, Complainant,
v. In Equity.
Henry Hopkins et al., members of the Kansas City Live Stock Exchange, Defendants and Appellants.

Know all men by these presents, that we, John C. McCoy, George R. Barse, W. S. Hannah, M. D. Scruggs, James Keeney, R. P. Woodbury, J. T. Kieley, Frank Seigel, Chester A. Snider, A. E. Beggs, L. A. Lennon, John N. Payne, H. A. Moore, and H. W. Thompson are held and firmly bound unto the United States of America in the sum of ten thousand ($10,000.00) dollars, for the payment whereof well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Dated and sealed with our seals this twenty-eighth day of September, A. D. 1897.

Whereas, in a certain cause pending in the Circuit Court of the United States for the District of Kansas, First Division,

wherein the United States of America are the complainant, and Henry Hopkins et al., are defendants, an order of temporary injunction has been awarded against the said defendants, from which the said defendants have prosecuted an appeal to the United States Circuit Court of Appeals within and for the Eighth Circuit. Now, therefore, the condition of this obligation is such that if the said defendants shall prosecute said appeal with effect, and answer all damages and costs if they shall fail to make said appeal good, then this obligation shall
457 be void; otherwise the same shall be and remain in full force and virtue.

Charles A. Snider,	W. S. Hannah,
A. E. Beggs,	M. D. Scruggs,
L. A. Lennon,	Jas. Keeney,
John N. Payne,	Rufus P. Woodbury,
H. W. Thompson,	J. T. Kieley,
John C. McCoy,	Frank Seigel,
George R. Barse,	H. A. Moore.

The foregoing bond is hereby approved, and it is ordered that the appeal which has been taken and allowed herein shall operate as a supersedeas, stay, and suspension of the force and effect of said order of temporary injunction until the final disposition of said cause in the appellate courts.

CASSIUS G. FOSTER,
Judge awarding said order of temporary injunction.

Indorsed: No. 7402. United States vs. Henry Hopkins et al. Bond for appeal. Filed Sept. 28, 1897. Geo. F. Sharitt, Clerk.

458 United States of America,
District of Kansas—ss.

I, Geo. F. Sharitt, clerk of the Circuit Court of the United States of America, for the District of Kansas, do hereby certify the foregoing to be a true, full and complete transcript of the record and proceedings had in said court in the case of The United States of America, plaintiff against Henry Hopkins and others, defendants, No. 7402 in said court.

Seal of the Circuit Court of the United States District of Kansas. First Division.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said District of Kansas, this 30th day of September A. D. 1897.

GEO. F. SHARITT, Clerk.

Filed Oct. 5, 1897. John D. Jordan, Clerk.

287 (*Appearance of Counsel for Appellants.*)

And on the tenth day of November, A. D. 1897, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

HENRY HOPKINS *et al.*, Appellants,
vs.
UNITED STATES OF AMERICA.

The clerk will enter my appearance as counsel for the appellants.

L. C. KRAUTHOFF.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 1002. Henry Hopkins *et al.*, appellants, *vs.* United States of America. Appearance. Filed Nov. 10, 1897. John D. Jordan, clerk. L. C. Krauthoff, counsel for appellants.

(*Order to Certify Questions.*)

And on the eighth day of December, A. D. 1897, in the record of the proceedings of said circuit court of appeals is an order to certify questions to the Supreme Court of the United States in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

WEDNESDAY, *December* 8, 1897.

HENRY HOPKINS *et al.*, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } No. 1002.

Appeal from the circuit court of the United States for the district of Kansas.

In this cause it is now here ordered that certain questions arising upon the record be, and they are hereby, ordered to be certified to the Supreme Court of the United States under the provisions
288 of section six of the act of Congress of March 3, 1891, for the instruction of the said Supreme Court upon said questions.

Certificate to Transcript.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing pages contain a full, true, and complete transcript of all the plead-

ings, proceedings, and record entries, except the portions of the transcript of the record from the circuit court omitted from the printed record by stipulation of parties and the certificate of questions to the Supreme Court of the United States, which has heretofore been certified to that court, in the case of Henry Hopkins *et al.*, appellants, *vs.* The United States of America, No. 1002, December term, A. D. 1897, as full, true, and complete as the originals of the same now remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this seventh day of January, A. D. 1898.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

289 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Henry Hopkins *et al.* are appellants and The United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Kansas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and re-
290 moved into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return to Writ.

United States Circuit Court of Appeals, Eighth Circuit.

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at office, in the city of St. Louis, Missouri, this eighth day of January, A. D. 1898.

al United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] Supreme Court of the United States. No. 533. October term, 1897. Henry Hopkins *et al. vs.* The United States. Writ of certiorari. Filed Dec. 27, 1897. John D. Jordan, Clerk.

Endorsed on cover: Case No. 16,746. Supreme Court U. S, October term, 1897. Term No., 533. Henry Hopkins *et al.*, appellants, vs. The United States. Writ of certiorari and return. Filed January 11, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES.

CERTIFICATE.

In the United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

HENRY HOPKINS *et al.*, Appellants,
v.
THE UNITED STATES OF AMERICA, Appellee. } No. 1002.

The United States circuit court of appeals for the eighth circuit, sitting in the city of St. Louis, Missouri, on the eighth day of December, 1897, certifies that from the record on file in the above-mentioned cause, which cause is now pending and undetermined in said court upon an appeal, duly taken by the defendants below, from an interlocutory order of injunction made and entered in said cause by the circuit court of the United States for the district of Kansas, the following facts appear:

1. In and by the verified bill of complaint filed herein on the 31st day of December, 1896, it was alleged that *each of* the defendants, about 300 in number, are members of a voluntary, unincorporated association known and designated as the "Kansas City Live Stock Exchange," and have adopted articles of association and rules and by-laws, whereby they have agreed that they will faithfully observe and be bound by the same; that the government of said association is vested in a board of 11 directors and its officers, consisting of a president, vice-president, secretary, and treasurer; its place of business is in a building situated on the line between

the States of Missouri and Kansas, and that defendants transact business partly in one State and partly in the other; that substantially all of the business transacted in the matter of receiving, buying, selling, and handling live stock at the Kansas City stock yards is carried on by defendants and other members of said exchange as commission merchants; that a large proportion of such live stock is shipped from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, and Arkansas, and the Territories of Oklahoma, Arizona, and New Mexico, and is sold by the defendants to the various packing-houses in Kansas City, Mo., and Kan., and also for shipment to other markets; that a vast number of live stock is thus annually received and sold; that said Kansas City market is a public market and supplies a large number of packing-houses in Kansas City, Kan., and Kansas City, Mo., and other cities in different States of the Union; that the Kansas City market, next to Chicago, is the largest live-stock market in the world; that, under the practice and custom at said yards, the live stock there received is delivered to commission merchants, who receive, handle, sell, or reship the same for the consignors and owners thereof to other States and Territories, charging a commission for their services; that in the course of business at said yards said stock is moved and shifted from one State to the other, according to the convenience of said Kansas City Stock Yards Company; that a large portion of said stock is incumbered by mortgages executed by the owners thereof to the defendants, members of said exchange, who advance large sums of money to growers and owners of cattle to provide the means to feed and prepare them for the market; that when such cattle are ready for shipment they are consigned to the defendants and other members of said exchange who have made such advancements, and the amount thereof and interest is deducted from the proceeds of sale; that 90 per cent. of the members of said exchange make such advancements; that said stock yards accord to owners and shippers of live stock the only available means at that place for handling, selling, and reshipping live stock; that by reason of its situation said Kansas City stock yards are the only available public market for the purchase and sale of live stock for an exceedingly large territory of the United States, and the only available means for the exchange of interstate traffic between the States and Territories named, the stock being sold in said yards to be shipped to other States of the Union; that it is the custom among a large number of cattle growers and shippers who consign live stock to the Kansas City stock yards to draw drafts on the commission merchants to whom such stock is consigned, and attaching the bill of lading issued by the carrier therefor to draw money on said drafts from local banks, and when presented to the consignees said drafts are paid by them in Kansas and Missouri and the proceeds remitted to the banks in the various towns and cities where the live stock was shipped; that by reason of the fact that said yards are in the States of Missouri and Kansas and the live stock handled and sold therein is at times in Kansas and at others in Missouri, and are transported from different States to be sold

and shipped to other States, said business is interstate in character and can only be controlled by Federal legislation, as a part of commerce between the States. The bill further charges that if the person or partnership to whom live stock is consigned at Kansas City is not a member of said exchange he is not permitted to sell or dispose of such live stock on the Kansas City market, for the reason that the defendants and all other commission merchants doing and controlling the business at said yards are required by the rules of said exchange to refuse to buy live stock or in any manner deal with a person who is not a member of said exchange, and in all such cases the owner of the live stock is compelled to reship the same to some other market, and by reason of said unlawful combination is prevented from delivering said live stock to the Kansas City stock yards, and the sale of the same is thereby hindered and delayed, extra expense and loss entailed to the shipper, and an obstruction placed upon the marketing of such live stock; that among other rules for the government of said exchange are the following:

"RULE IX.—*Commissions.*

"SECTION 1. The commissions charged by members of this association for selling live stock shall not be less than the following-named rates:

"SEC. 2. Six dollars per car-load for single-deck car-loads of hogs or sheep, and ten dollars per car-load for double-deck car-loads of the same: Provided, members of this exchange may, after charging commissions as above provided, pay a regular sheep salesman on these yards a sum of money contingent on number of sheep sold. Said sheep salesman may be in the employ of other members of the exchange.

"SEC. 3. Fifty cents per head for cattle of all ages. In car-loads of twenty-four or more, not more than twelve dollars per car-load; ten dollars per single-deck car-loads, and eighteen dollars per double-deck car-load of veal calves.

"SEC. 4. Fifty cents per head for cattle, and twenty-five cents per head for calves, and ten cents per head for hogs and sheep in mixed car-loads, but not to exceed twelve dollars per car-load. Fifty cents per head for cattle and twenty-five cents per head for calves driven into the yards; and ten cents per head for hogs and sheep for sixty head or less. More than that number shall be charged for at car-load rates.

"SEC. 5. Fifty cents per head for buying cattle for stockers or feeders: Provided, such charges shall not exceed twelve dollars per car-load. Six dollars per single-deck car-load for buying sheep, and ten dollars per double-deck car-load. All purchases paid for by a commission-house or shipping clearance made by same shall be deemed a purchase, and charged for as above provided.

"SEC. 6. Not less than four dollars per single-deck and five dollars per double-deck car-load for buying live hogs, and not less than three cents per head for hogs bought by the head.

"SEC. 7. No member or commission firm or corporation repre-

sented herein shall do business for a yard trader or speculator on this market for less charges than one-half the regular commission.

"SEC. 8. No firm shall handle the business of a non-resident commission-house for less than full commissions, except said consignments be made direct to said non-resident commission-house from one of the following-named markets: Chicago, Ill; East St. Louis, Ill.; St. Louis, Mo.; Omaha, Nebraska; Wichita, Kans.; Denver, Col.; Pueblo, Col.; St. Joseph, Mo.; Sioux City, Ia.; Peoria, Ill.; Milwaukee, Wis.; and Ft. Worth, Tex.

"SEC. 9. No member of this exchange or firm or corporation represented herein shall cause or allow to be shipped in his or its name any kind of live stock for the purpose of violating any of the provisions of this rule.

"SEC. 10. No agent, solicitor, or employé shall be hired except upon a stipulated salary, not contingent upon commissions earned (save as provided in section 2 of this rule). No solicitor shall be employed except as a *bona fide* traveling agent, who shall not solicit consignments local to his own neighborhood only, nor to secure his individual trade. Nor shall any agent, solicitor, or employé be hired who is employed by any other party or parties, or who is actively engaged in other business (save as provided in section 2 of this rule). Members of this exchange must file with the secretary, within five days of employment, the names and addresses of their solicitors. More than three solicitors shall not be employed at one time by a commission firm or corporation. Members of a commission firm or corporation—resident or non-resident of Kansas City—may travel as solicitors, but must be registered as one of the three allowed each firm or corporation. It shall be a violation of this rule for any solicitor representing or claiming to represent a commission firm or corporation in any other market to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

"SEC. 11. Any member of this association or firm or corporation represented herein, sending or causing to be sent a prepaid telegram or telephone message quoting the markets, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine be not paid within three days, said firm or member shall be suspended until said fine is paid: Provided, however, that prepaid messages may be sent to shippers quoting actual sales of their stock on the day made; also, to parties desiring to make purchases on this market.

"SEC. 12. Any member of this exchange or firm or corporation in which he may be a partner, violating any of the provisions of this rule, shall be fined not less than $500, nor more than $1,000, for the first offense. If said fine be not paid within three days, said member or firm may be suspended from membership until same is paid. For a second offense, said member or firm may be expelled from membership in the exchange.

"SEC. 13. From such fines and special assessments, the exchange shall pay a reward of $500 to any party or parties furnishing suffi-

cient evidence to convict any member of a violation of any of the provisions of this rule, and said reward shall be paid immediately after conviction.

"SEC. 14. For the purpose of making effective section 12 of this rule, when the treasurer shall not have on hand from fines collected the sum of $500, the directors shall levy a special assessment, *pro rata*, on each commission firm or corporation buying or selling live stock in this market who is a member of the exchange; and they shall continue to levy such special assessments in such amounts as will keep a fund of $500 constantly on hand for this purpose. Said fund shall be kept as a special fund, and shall be used for no other purpose.

"SEC. 15. Each firm or corporation represented in this exchange shall be held responsible for any violation of this rule by any party doing any portion of a commission business in its name, and any penalty imposed for violation of the foregoing shall be on account of such party. If not paid within three days, the firm or corporation doing said business shall sever its business connections with such party within ten days. No firm or corporation shall thereafter do any business for such party until said fine is paid."

"RULE XVI.—*Limitations.*

"SECTION 1. No member of the Kansas City Live Stock Exchange shall transact any business with any person violating any of the rules or regulations of this exchange, or an expelled or suspended member, after notice of such violation, suspension, or expulsion has been issued by the secretary or board of directors of the exchange."

The bill further charges that the defendants, by the adoption of said articles of association, have confederated and conspired together in violation of the laws of the United States, and particularly of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and to monopolize the business of buying and selling live stock at the Kansas City market, and to illegally fix and establish a minimum price for buying and selling the same, and have further, in restraint of trade and commerce between the States, confederated together to prevent and restrain the free transmission of information regarding the state of the market by telegraphic messages, and have restricted the free employment of agents and solicitors in the prosecution of business at said stock yards; that the purpose of defendants in organizing said exchange is to prevent the shipment of any live stock to the Kansas City market, unless shipped to the Kansas City stock yards and to defendants or other members of said exchange; and the further purpose was to compel shippers to pay to defendants and their associates the commissions provided for in rule 9, and to prevent the shipment and sale of property on said market unless such commissions were so paid. The bill further charges that it was also the purpose of said defendants and their associates to monopolize the business of receiving, handling, and

selling live stock received at said market, and also to prevent its sale by any person not a member of said exchange, and to obstruct and retard the owners of such live stock in the sale of the same on the market at Kansas City. Thereupon the complainant prays for a decree dissolving said exchange and for an injunction against said defendants restraining them from enforcing or acting pursuant to the rules and by-laws of said association. An answer under oath was expressly waived.

2. In and by the answer of the defendants filed on the 27th day of February, 1897, it was alleged that they admit the organization of said defendants into an association known as the "Kansas City Live Stock Exchange," and aver that similar associations, under the names of "boards of trade" or "exchanges," exist in practically every city of importance in the United States devoted to the buying and selling of stocks, bonds, grain, live stock, petroleum, and all other products, with similar rules for government and transaction of business, in order that competition between the members may be fair and reasonable; that said methods are sanctioned by the experience of the commercial world and tend to develop trade and commerce and not to restrict the same. The preamble of their organization is as follows:

"We, the undersigned, for the purpose of organizing and maintaining a business exchange, not for pecuniary profit or gain, nor for the transaction of business, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City stock yards, and to promulgate and enforce amongst the members correct and high moral principles in the transaction of business, have associated ourselves together, under the name of 'Kansas City Live Stock Exchange,' and hereby agree each with the other that we will faithfully observe and be bound by the following rules and by-laws, and such new rules, additions, or amendments as may from time to time be adopted in conformity with the provisions thereof, from the date of organization, by the election of a board of directors and other officers, as prescribed by rule 1."

The defendants deny that through their membership substantially all of the business of buying and selling live stock at Kansas City is carried on. On the contrary, any person desiring to sell live stock at said city is under no obligation to employ a commission merchant, but is at full liberty to act for himself, and the stock yards company extends to such person all the privileges and facilities afforded by it; and persons desiring to purchase live stock at the yards may, and they constantly do, purchase direct from the owners, and very much the largest part of the cattle purchased for feeding is bought without the employment of any commission merchant. The only restriction upon members of the exchange is that contained in rule 16, viz., that they will not deal with a person as a commission merchant who violates the rules of the exchange or who is a suspended or expelled member thereof. It is further averred that the Kansas City market is not a public market, but is of a private character merely. Defendants further aver that, with the exception of the firm of Greer, Milis & Co., which

was first suspended from membership in the exchange for non-payment of a fine imposed for a violation of the rules thereof, and which subsequently voluntarily withdrew from said exchange, all of the commission merchants at said yards are members of the exchange. Defendants further aver that whenever drafts are drawn on a commission merchant they are paid either at the place where payable by the terms thereof or on presentation to the drawee, and that such place of payment is either in the State of Kansas or Missouri, according as the particular transaction is closed. Defendants are informed by counsel and believe that the exercising of their occupation is not commerce between the States within the meaning of the Constitution or laws of the United States; that it is not true that a consignor of live stock is not permitted or cannot sell the same at said yards, or that the members of said exchange refuse to deal with a non-member thereof. It is not true that any person shipping live stock to said yards and refusing to employ a member of said exchange is compelled to reship the same to some other market. Defendants deny that there is any unlawful combination among them, or that any person is prevented from delivering stock to the Kansas City stock yards, or that the sale thereof is hindered or delayed or expense or loss to the shipper entailed or any obstruction or embargo placed upon the marketing of any live stock. Defendants deny that any of the rules of said association are in restraint of commerce between the States or otherwise. Defendants deny that they have confederated together, in violation of the laws of the United States, to monopolize the business of buying and selling live stock at said yards, or to illegally fix a minimum price for buying and selling such live stock, or to restrain the free transmission of information respecting the state of the Kansas City market by telegraphic messages, or restrict the free employment of agents or solicitors in said business; that experience has shown that to the success of such an organization it is absolutely essential that there should be a uniform schedule of commissions, and that all members should observe the same, and that by permitting evasions or violations of such schedule a condition is created by which irresponsible persons might and would bring about a state of unhealthy cutting of prices—a practice unfair to shippers and purchasers and ruinous to responsible persons, who carry on the occupation of commission merchants fairly. They have no desire to prevent any person from acting as a commission merchant at Kansas City, but they admit that it is not to the interest of the public or shippers to employ non-members, and that individually and collectively the provisions of their articles of association are invoked for the purpose of preventing the success of any competitor, either in his efforts to destroy said exchange or to succeed in driving the competitors of such parties from the field. The defendants' answer was duly verified, they claiming the benefit of such verification under the 41st equity rule as amended.

3. A general replication was filed.

4. The application for an interlocutory injunction came on for hearing upon the foregoing pleadings and upon a series of affidavits

filed by the respective parties, from which affidavits the following matters were made to appear, in addition to those conceded to be true by the pleadings, to wit:

The defendant association is located at Kansas City, on the line between Kansas and Missouri, in the immediate vicinity of the Kansas City stock yards and in close association therewith, being tenants of said stock yards company. Said yards, with perhaps the exception of the yards at Chicago, are the largest in the country and handle great numbers of live stock. These yards, the packing-houses, and this exchange are all situated at the gateway through which flows a great stream of commerce from the several States and Territories, and among all the business tributary to this locality probably none is as important as the live-stock business and the various industries connected therewith. The defendant association is entirely voluntary in form and does not directly require any persons engaging in the live-stock commission business to become a member; but rule 16, set out in the bill of complaint, prohibits any member from dealing with any person violating any of the rules or regulations of the exchange or an expelled or suspended member, after notice of such suspension has been issued by the secretary or board of managers. In practice, this rule shuts out all dealings and business intercourse between members and non-members of the association. The entire membership of the association regards a commission merchant attempting to do business at the Kansas City stock yards without joining the exchange as one violating this rule, and treat him accordingly; and this construction is a natural one, for a compliance with the rules of the exchange requires a party to subscribe to its rules and by-laws and to pay a membership fee (which is now $2,500), to pay his assessments, and observe all other requirements, including the fees and commissions fixed for handling live stock in accordance with said rules, and it may well be said that any dealer or broker does business in violation of these rules who does business at all and fails to join the association. Several parties attempted to enter the field and do business there without joining the exchange, and in every instance, unless protected by the courts, they have been compelled to abandon the undertaking. All parties now engaged in the business are members of the exchange, except Greer, Mills & Co., who are making a fight in the courts to maintain their business and are temporarily protected by injunction. Any person or partnership attempting to carry on business independent of the association is invited to apply for membership, and if he fails to do so, or if rejected and attempts to proceed, his name is written on a blackboard kept for public use in the exchange building, and all members are warned against dealing with him. This admonition is strictly obeyed. The outcome is inevitable. The combined opposition of three hundred men against one can produce but one result. Almost every purchaser or vendor of live stock, including the great packing houses, does business through commission merchants, and nearly the entire volume of live stock received at the yards is consigned to and controlled by these merchants, members

of the exchange. In vain does the outside dealer offer attractive bargains for the sale or purchase of stock. They will have no intercourse with him. This state of affairs is known and circulated among stock growers and shippers, and they dare not ship their stock to this broker or firm. The object and purpose of the exchange is written across its face, where all can read. It is to acquire and keep the exclusive control of the entire business of buying and selling live stock on commission at the Kansas City stock yards within its own members. Prior to the organization of the exchange the published rate of commission was fifty cents per head, but it was the common practice of shippers of stock to make contracts with the commissionmen whereby the rate of commission actually paid was one-half that sum.

The method of business of the defendants is as follows: The shipment of live stock from growers, dealers, and traders in Kansas, Colorado, Nebraska, Missouri, Texas, New Mexico, Arizona, Oklahoma, and other States and Territories is solicited by the commission merchant in various ways, but largely by the personal solicitation of agents who travel about the country and interview the stockmen. Frequently the commission man makes loans of money on the herds, secured by chattel mortgage. The consignment of the stock is made to the commission man or firm at the Kansas City stock yards and there unloaded. Frequently the shipper draws on the consignee through his local bank with the bill of shipment attached, and when the stock is sold the loan on the cattle or the draft on the consignee, as the case may be, is paid out of the proceeds and the balance remitted to the shipper. While the broker is soliciting consignments of stock for sale, he is also on the alert for purchasers. He sells the stock without regard to its destination. Some is reshipped to other markets in other States, notably to Chicago and St. Louis. Much of it, especially hogs, is slaughtered at the large packing-houses near by, in Kansas and Missouri.

The defendants are active promoters and frequently interested parties in this immense traffic. They reach out over many States and Territories by their solicitors and advertisements and gather in, for sale and slaughter, millions of cattle, sheep, and hogs, and their rules and regulations cover the entire business and extend over the whole field of operation.

This live stock is shipped from various States for immediate sale, and if the market at Kansas City is not satisfactory, it is to be shipped to another market.

5. Subsequently the circuit court entered an order of interlocutory injunction, appealed from, as aforesaid, to the following purport:

"This cause having heretofore been heard and submitted on the bill of complaint, affidavits, proofs, arguments, and briefs of the respective counsel on application for a temporary injunction *pendente lite*, and the court, being now fully advised in the premises, doth find that on the bill, affidavits, and proofs submitted the application for a temporary restraining order and prohibition herein should be granted.

It is therefore ordered and decreed by the court until the final

hearing and decree on the merits, and until the further order and decree of the court, that the defendants herein, and each and every one of them, their agents, servants, and employés, be, and they are hereby, enjoined, either as associates in the Kansas City Live Stock Exchange or otherwise, from combining by contract, agreement, or understanding, express or implied, so as by their acts, conduct, or words to interfere with, hinder, or impede others in shipping, trading, selling, or buying live stock that is received from the States and Territories at what is known as the stock yards at Kansas City, Missouri, and Kansas City, Kansas, and shipped there from other States and Territories for sale there or for further transportation or for sale in or shipment to foreign markets.

And it is further ordered and decreed that the said defendants, either collectively as such Kansas City Live Stock Exchange or through its board of directors or otherwise, and each of them, their agents, servants, or employés, be, and they are hereby, enjoined from enforcing or recognizing or acting under the following rules of said Kansas City Live Stock Exchange, to wit, rules 9 and 16, each and every section thereof, and any and all amendments thereto in respect to such live stock, and from imposing or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such live stock, or from discriminating in favor of any member of said Kansas City Live Stock Exchange because of such membership, and especially from in any manner discriminating against any person trading at said stock yards in such live stock, and from refusing by united or concerted action, or by word, persuasion, threat, or other means, to deal or trade with persons with respect to such live stock who are not members of said association because of such non-membership, or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such live stock at said stock yards, and the same as if such Kansas City Live Stock Exchange did not exist.

And it is further ordered and decreed that the defendants and each of them, their servants, agents, and employés, be, and they are hereby, enjoined and prohibited from entering into any contract, agreement, combination, or conspiracy fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock shipped from one State or Territory for sale or disposition in another State or Territory or in foreign countries; also from entering into any contract, agreement, combination, or conspiracy limiting or attempting to limit the right of any person in business at said Kansas City stock yards to employ labor or assistance in soliciting shipments of live stock from other States or Territories, or the right of any such person to send telegrams, prepaid or not, from said stock yards to any other State or Territory."

6. And the said United States circuit court of appeals further certifies that, to the end that it may properly decide the questions arising in said cause and presented by the record and assignment of errors therein, said court desires the instruction and direction of the

Supreme Court upon the following questions and propositions of law, which, among others, arise upon said record, to wit:

First. Do the facts as above recited and admitted in the pleadings show that the appellants have violated any of the provisions of the act of Congress approved July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies"?

Second. Do the acts done by the appellants and above recited, or any of them, show that the appellants are amenable to the process of injunction issued at the instance of the United States under and by virtue of the provisions of section four of the said act of Congress?

Third. Are the aforesaid agreements mentioned in rule IX of said exchange, to wit, fixing a schedule of minimum commissions, limiting the number of solicitors to be employed, or prepaid telegrams to be sent, or any of them, under the facts disclosed by the record, a contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States within the meaning of said act of Congress?

Fourth. Do the agreement mentioned in rule XVI of said exchange and the acts of the defendants thereunder show a conspiracy in restraint of trade or commerce among the several States or a monopoly or attempt to monopolize any part of the trade or commerce among the several States within the meaning of said act of Congress?

In witness whereof the undersigned judges, holding said circuit court of appeals, have hereunto, this 8th day of December, A. D. 1897, at the city of St. Louis, Mo., set their hands and have ordered and directed that the foregoing certificate *to* be filed in said circuit court of appeals, and by the clerk of said court duly forwarded to the Supreme Court of the United States.

WALTER H. SANBORN,
Circuit Judge.
AMOS M. THAYER,
Circuit Judge.
JNO. F. PHILIPS,
District Judge.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Henry Hopkins *et al.*, appellants, *vs.* The United States of America, No. 1002, December term, 1897, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the

Seal United States Circuit Court of Appeals, Eighth Circuit.

seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this eighth day of December, A. D. 1897.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 1002. Henry Hopkins *et al.*, appellants, *vs.* The United States of America. Certificate of questions to Supreme Court of the United States. Filed Dec. 8, 1897. John D. Jordan, clerk.

Endorsed on cover: Case No. 16,746. U. S. C. C. of appeals, 8th circuit. Term No., 533. Henry Hopkins *et al.*, appellants, *vs.* The United States. Filed December 10, 1897.

No. 533.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

MOTION TO ADVANCE CAUSE ON DOCKET.

The appellants come now and show to the Court that this case, in a general way, involves the lawfulness of the commercial exchanges and boards of trade which are to be found in the various large cities and important trade centers, in view of the provisions of the so-called trust act of July 2, 1890. It is of supreme public importance, and in view of the conclusion expressed by the circuit court that the defending Kansas City Live Stock Exchange is an illegal combination, a speedy determination of the case is imperatively essential, to the end that if such organizations be lawful they may proceed without further interruption in their respective careers of usefulness, and if illegal that the public be relieved of the evil they work at the earliest possible

moment. The appellants venture to suggest that as the construction of the same act of July 2, 1890, is involved in the pending case of United States *vs.* Joint Traffic Association, which has already been set for hearing on January 3, 1898, it would be proper and promotive of the convenience of this Court to assign this cause for hearing immediately after that case. If for any reason this suggestion is not adopted, we ask that the case may be assigned for the earliest possible day thereafter and not later than the cases already set for that day.

L. C. KRAUTHOFF,
Solicitor for Appellants.

The appellee, waiving further notice of the foregoing motions, joins therein and asks that said cause may be advanced as therein prayed and be set for some convenient day.

J. K. RICHARDS,
Solicitor General.

No. 533. 210.

Supreme Court U.S.
FILED
DEC 13
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 533.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

ON CERTIFICATE FROM CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

Motion by Appellants for Order Requiring Entire Record and Whole Cause to be Certified to this Court.

The said appellants come now and show to the Court that an appeal herein having been duly taken to the circuit court of appeals for the eighth circuit, that court, pursuant to the provisions of section 6 of the act of March 3, 1891 (26 Stat. L., 826), has certified certain questions to this Court for determination, which certificate has been duly filed with the clerk of this Court, to which reference is had.

And thereupon the said appellants move the Court to

order the entire record in said cause, as filed in the said circuit court of appeals, to be certified to this Court, as provided in said section 6 of the act of Congress above referred to, in accordance with the course pursued in the (in these respects) similar case of Anderson *vs.* United States, No. 479, in which the order was made October 25, 1897. Appellants present herewith a complete printed copy of said record, and in support of this motion show to the Court that it appears from said record—

First. This is a proceeding under section four of the so-called trust act of July 2, 1890, to dissolve the Kansas City Live Stock Exchange and to enjoin the enforcement of certain of its most important rules (Record, p. 12). That association is a typical American commercial exchange or board of trade, and the charges of unlawfulness against these appellants, if sustained, are equally applicable to every such typical organization in the United States. As these bodies are very large in number—there being one or more of them in every city of commercial importance in the civilized world; as the persons to be branded as violators of the congressional enactment are exceedingly numerous; as the value of the membership in such bodies in the United States aggregates over one hundred million dollars, and as the influence of these bodies, for good or evil, is incalculably great and constantly exerted, it is apparent that the case is one of surpassing importance. It ought, therefore, to be decided only upon the fullest examination of all the facts, and not alone upon a necessarily condensed statement thereof in the form of a certificate.

Second. This case is not one which falls within the final jurisdiction of said circuit court of appeals; consequently, after the questions stated in said certificate have been answered, an appeal can be taken from said court to this Court. As a result, this Court is subject to be called upon to pass on

the case a second time, thus largely increasing its labors, putting the parties to additional expense, and greatly delaying the final disposition of the case, which the interests of the public, as well as of the parties, require to be promptly and authoritatively disposed of at the earliest possible moment. So, too, on such subsequent appeal this Court might find many of the important facts to be different from those recited in said certificate, and consequently reach a result directly at variance with that foreshadowed by its response to said questions.

Third. The case was heard below on bill, answer, and replication, and upon a series of affidavits fully disclosing the theories and views of the respective parties; so that by examining the entire record this Court will be able to make what will be, to all intents and purposes, a final and complete disposition of the controversy.

Fourth. The order appealed from is *mandatory* in form and operates as a *final decree* (Record, pp. 277, 278). The certificate under consideration was framed upon the assumption on the part of the circuit court of appeals that this Court would follow the precedent set in Anderson *vs.* United States, *supra*, which recently came from the same court, and in which this Court promptly granted a motion to certify the complete record. It was also the understanding and agreement of counsel for both parties to this case in said Court, so far as it was competent for them to influence the matter, that the order herein prayed for should be made.

Fifth. The certificate under consideration is limited to a substantial recital of the conclusions expressed upon the facts by the circuit court. As to many of these conclusions, it will be insisted that they are wholly unwarranted by the uncontradicted testimony in the case. Only a portion of the rules of the defending exchange are disclosed. In justice

to the appellants, their rules should be considered in their *entirety* and the lawfulness of their association judged only upon a review of *all* its purposes and regulations. A mere casual perusal of the opinion of the circuit court (Record, p. 267 *et seq.*) will readily disclose other matters which can be fairly and intelligently considered only by having access to all the details and circumstances bearing thereon.

To these ends a certification of the entire record is indispensably essential. This record being already in print, there will be no appreciable delay in the hearing of this interesting and highly important case.

L. C. KRAUTHOFF,
Solicitor for Appellants.

The appellee, waiving further service of the foregoing motion, joins in the foregoing motion and in asking that the order prayed for may be made.

J. K. RICHARDS,
Solicitor General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

KANSAS CITY LIVE STOCK EXCHANGE,
(*Sub nom.*, HENRY HOPKINS, et al,)
Appellants,

v.

UNITED STATES,
Appellee.

STATEMENT OF CASE, BRIEF, AND ARGUMENT FOR THE APPELLANTS.

STATEMENT OF CASE.

This is a proceeding instituted in the Circuit Court of the United States for the District of Kansas by way of a bill in equity in the name of the United States against the members of the Kansas City Live Stock Exchange, based upon the Act of Congress, approved July 2, 1890, "to protect trade and commerce against unlawful restraints and monopolies." (26 Stat. L., 209).

In order to facilitate the consideration of this presentation of the case, a Table of Contents has been prefixed thereto.

THE BILL OF COMPLAINT.

The bill (Record, 2–13) contains, substantially, the following allegations:

The defendants, about 300 in number, are members of a voluntary, unincorporated association known as the Kansas City Live Stock Exchange, and have adopted certain by-laws and rules which they have agreed to observe and to be bound by; thereby the government of said Exchange is vested in a board of directors and certain officers, who carry on the said Exchange at the Kansas City Stock Yards, with the consent of the members thereof. Said Stock Yards are situate partly in Missouri and partly in Kansas, the State line running through the same, and about one-half of said defendants have their offices in each of said States.

The Kansas City Stock Yards Company, a corporation, (but not sued), is the owner of said yards and buildings used in connection therewith, which are situate partly in each of said States.

Substantially all the business of receiving, buying, selling and handling live stock at said Kansas City is carried on by the defendants and their fellow-members of said Exchange, acting as commission merchants. Such live-stock is shipped to said yards from Kansas, Nebraska, and other States, and from Oklahoma and other territories, and sold by said commission merchants to the managers of various packing-houses situate in the two Kansas Cities, or for shipment to various other markets, particularly Chicago, St. Louis, and New York. A "vast" quantity of live-stock is annually thus received, handled and sold. Kansas City is a public market and supplies said packing houses and others elsewhere in the Union. Second to Chicago, Kansas City is the largest live-stock market in the world. Under the custom long prevailing there, live-stock is delivered to members of said Exchange for sale and

re-shipment, on behalf of the consignors and owners, "charging them a commission for their services."

In the course of business at said yards, such live-stock is moved and shifted from that part of the yards in Missouri to that part thereof in Kansas, and *vice versa*, according to the convenience of said Stock Yards Company; and in making re-shipments, pens and loading chutes in both States are used.

Much of the live-stock shipped to said stock yards is encumbered by mortgages executed by residents of the States and Territories mentioned, to persons who are members of said Exchange, it being the custom of such members to advance large sums of money to the owners of live-stock, to enable them to feed and prepare the same for market. Such mortgaged live-stock is shipped to the mortgagees, who collect their claim out of the proceeds of the sale thereof. Ninety per cent of such members make these advancements "and a large and growing market for live-stock at Kansas City is largely sustained by means of the money so advanced."

Said stock yards furnish the only available means for handling, selling, and re-shipping live-stock within 200 miles to the north, south, and east of said city, and for 2,000 miles to the west thereof. By reason thereof, said stock yards is the only available public market for the purchase and sale of live stock in said States and Territories and the only available means for the exchange of interstate traffic in said live stock between the States and Territories named. It is the daily custom of commission merchants to make sales in Missouri of live stock which is at the time located in the pens in Kansas, and *vice versa*, and deliveries are made from pens in one of said States to purchaser in the other.

All the commission merchants at said yards are members of said Exchange.

It is the custom of consignors of live-stock in one State to draw drafts on the commission merchants to

whom the same is consigned, residing in another State, attaching the bill of lading thereto, to obtain money on said draft from local banks, and for the drawees thereof to pay the same in Missouri and Kansas.

Because business at said yards is transacted on both sides of said State line, and because live-stock received at said yards is transported from one State to another, and in the course of the receipt, sale, delivery, and reshipment thereof is at times in Kansas and at other times in Missouri, the said business is interstate in character, and not subject to the laws of Missouri and Kansas in reference thereto, but can only be regulated by Federal legislation, "because it is a part of the commerce between the States." Said yards are also patronized by persons who purchase live-stock thereat for reshipment to Eastern States and for foreign export, having resident agents to make such purchases. The live-stock, when so purchased, is loaded into railroad cars to be carried to Chicago, St. Louis,New York, and other Eastern markets. Large shipments are made to said yards by owners from various States for the purpose of being sold and having the proceeds remitted to such owners.

If the consignee of live-stock is not a member of said Exchange, he is not permitted and cannot sell or dispose of the same at said yards, for the reason that such members, as required by the rules of said organization, refuse to buy live-stock from, or to negotiate or deal with, a person or commission merchant who is not such a member. In all such cases the owner of live-stock is compelled to reship the same to some other market, by reason of the unlawful combination among said merchants, and consequently the sale thereof is hindered and delayed, extra expense and loss entailed upon the shipper, and an obstruction and embargo placed on the marketing of all live-stock shipped to said market, unless it is consigned to said Stock Yards Company or to some member of said Exchange, "who alone

are permitted by said Stock Yards Company to transact business at its stock yards." (As to this, see *note a*, *post.*)

The members of said Exchange have adopted and are governed by certain articles, by-laws and rules, many of which are in restraint of trade and commerce between the States and intended to create a monopoly, in contravention of the laws of the United States.

Among said rules are two, numbered IX. and XVI., respectively, a summary of which is given at a subsequent page, in connection with the other rules of the Exchange.

All of the members, it is charged, have agreed to be bound by, and to conform to Rule IX, and within three months prior to December 31, 1896, members have been suspended for a violation of Rule IX. (see Greer *v.* Stoller, 77 Fed. Rep. 1, for the instance referred to), and at various times jurisdiction has been exercised over complaints against other members for like violations.

By the adoption of these rules, and by associating themselves to carry the same into effect, and by conducting business as alleged, the members of said Exchange have conspired and confederated together in violation of the laws of the United States, and particularly of the Act of July 2, 1890, and in the prosecution thereof, have agreed: (*a*), to monopolize the business of buying and selling cattle at said market; (*b*), to illegally fix and establish a minimum price for their services; (*c*), and to prevent and restrain the free transmission of information regarding the state of the market, by telegraphic messages, and other information to the various States and Territories mentioned; and,(*d*),have restricted the free employment of agents and solicitors in the prosecution of their business as commission merchants.

The purpose of said Exchange is to prevent the shipment and consignment of live stock to said market unless shipped or consigned to the Kansas City Stock

Yards Company, or to some member of said Exchange, and by preventing such shipment or consignment to persons other than themselves, to compel shippers to pay the commissions fixed by said Rule IX., and to prevent shippers from placing their property on sale in said yards without paying such commissions to some member of the Exchange.

It was the purpose of such members to monopolize the business of receiving, handling, selling, buying, and re-shipping live stock at said market; to prevent a sale thereat by any non-member; to prevent any non-member from acting as a commission merchant at said market; and to obstruct and retard the owners of live-stock in the sale and disposition of their property in said market.

The bill concludes with prayers,

1. That the Exchange be dissolved;
2. That the members thereof be enjoined from:

a. Entering into or continuing in any sort of combination to deprive the people engaged in shipping, selling, buying, and handling live-stock, of the enjoyment of free access to said market and of the facilities afforded by said stock yards, upon payment to said Stock Yards Company of the same charges now paid by members of said Exchange;

b. From enforcing, acting under, or yielding obedience to said Rule IX., and from imposing or attempting to impose any of the penalties therein provided;

c. From discriminating against any person not a member of said Exchange solely because of such non-membership;

d. From refusing, by united or concerted action, to deal with persons who are not members, solely because of such non-membership;

e. From entering into a contract, combination, or conspiracy, fixing or tending to fix, directly or indirectly, the rate of commissions to be charged for buying

or selling live stock shipped from one State or Territory for sale or disposition in another; and

f. From entering into any contract, combination or conspiracy limiting, or attempting to limit, the right of any person engaged in business at said stock yards, to employ labor or assistance, or to send telegrams, prepaid or not, as he may desire; and

3. For general relief.

The bill was verified, as on absolute knowledge, by Norman B. Greer, on December 23, 1896, and was filed December 31, 1896. (Record, 13, 14).

Note *a.* Counsel *whose names are signed to the bill* are entitled to be relieved from any imputation because of the presence of the allegation that *members of the Exchange* "*alone are permitted by said Stock Yards Company to transact business at its stock yards*," having, doubtless, not been informed as to the true situation. In so far as this paragraph implies that an owner of live stock cannot bring his cattle to such yards and sell them to any person whatsoever, members of the Exchange included, the allegation is *wholly untrue.* If a commission merchant is employed who is not a member of the Exchange, he cannot avail himself of the privileges of membership therein, and members are prohibited from dealing with him as a commission merchant, if he violates the rules or has been suspended or expelled. (Rule XVI.) The allegation that the Stock Yards Company permits no one but members of the Exchange to transact business at its stock yards, is so palpably and notoriously false, that its appearance in this bill is surprising; the more so, because *the party who verified the pleading as absolutely true*, was, at the time he made that oath, advertising in the public prints that his own firm was engaged in business at said yards as a rival and competitor of the members of said Exchange, and soliciting consignments as such, and has made an affidavit in this case that the "Kansas City Stock Yards Company (is) *in nowise connected* with the

Kansas City Live Stock Exchange," except only that said stock yards company owns the building in which all of the commission men have offices (Record, 148, 180). Such is also the situation at Chicago (Stock Yards Co. v. Mallory, etc. Co., 157 Ill., 554, 562).

It also appears that nearly, if not quite, as many persons are engaged in the business of buying and selling live-stock at said stock yards (but not as commission merchants), without being members of the Exchange, as there are members of that body. In a legal sense, as shown in the brief, the allegations are, however, immaterial.

In order that the very important matters involved herein might be fairly presented and fully considered, the defendants filed an answer and also certain affidavits challenging such allegations of the bill as are generally and notoriously known to be utrue; presenting the rules of the defending Exchange in full; and explaining the precise facts as to certain matters relative to which the allegations of the bill are vague, obscure, misleading, or so unduly exaggerated as to convey the suggestion of unfairness or untruthfulness.

THE ANSWER.

The answer of the defendants (Record, 163–173,) sets up the following facts:

It has long since been and is now the uniform custom and practice, whenever a given city or point is inclined to become a trade center or market for given property or commodities, that the formation of an Exchange or Board of Trade is both proper and necessary in order to further the tendency to make such trade

center, to build up the same, and to maintain it when once established. By the common practice of mankind and in response to demands of business interests, such Exchanges or Boards of Trade are established and maintained by the persons engaged in the branch of business under consideration, or interested in the development thereof. In some instances, the organizations are formed by persons engaged in buying and selling a given product or commodity as principals, but in most of the instances such bodies are organized and maintained by parties who sell and buy a given product or commodity for others upon a commission, and known either as brokers or commission merchants.

Such organizations exist in practically every city of importance in the United States, and are devoted respectively to bonds and stocks, grain, cotton, and other agricultural products, live stock, petroleum, and other mineral products, and generally to all kinds and species of property which are bought and sold by persons acting for a commission or brokerage.

All of these organizations are framed upon the same model, and the provisions of their several charters, constitutions, rules and by-laws embody these features: membership is wholly at the will of the associates, and is granted subject to the conditions prescribed by the rules of the body in question, and continues only so long as those conditions are complied with; the privileges of membership are available only to members, and all others are excluded from such privileges and from the right to deal with such members; members are subject to discipline for dishonorable conduct, failure to keep their business engagements, and for other similar acts on their part; a schedule or tariff of the rates of commission or brokerage fees to be charged by the members in their dealings is prescribed, and all evasions thereof prohibited; actions or proceedings which the course of trade has demonstrated to have a tendency to cause stealthy and unfair or ruinous

warfare between members are provided against; members are prohibited from dealing with persons violating the rules of the body, or who have been suspended or expelled therefrom; and, generally, such provisions are made which, in the opinion of the business associates, based upon and sanctioned by the experience of the commercial world, do and will have the effect to inspire public confidence in the dealings of the associates, in the machinery provided for punishing dishonorable actions and for enforcing compliance with business engagements; well-known and reasonable rates of compensation to be charged by the members are prescribed, and in order that competition between the members may be fair and honorable, and that the same treatment may be accorded to all employers, evasions of such rules may be punished.

Such organizations do not engage in business, but exist simply in order to prescribe rules and provide facilities for the transaction of business by the members thereof, and to govern them by such rules and regulations as have been evolved and sanctioned by the developments of commerce, and which are universally recognized to be just and fair to all concerned.

Each member of said organization is left, and is, in fact, free to compete, in every manner and by all means recognized to be fair and just, for his share of a business which comes to the point at which the members of the organization do business.

After similar Live Stock Exchanges had been formed at Chicago, and East St. Louis, Illinois, and the great benefits to the public and to the persons interested in that business at said cities had been developed, the commission merchants engaged in selling and buying live stock at Kansas City, in 1886, formed the Kansas City Live Stock Exchange, following in their rules, regulations and schedule of commissions, in all substantial respects, the provisions which had been made upon the same subjects respectively by the Exchanges

theretofore established at Chicago and East St. Louis, Illinois, as aforesaid; and, that since the establishment of said Live Stock Exchange at Kansas City, similar Exchanges have been established at St. Louis, Mo., Omaha, Indianapolis, Buffalo, Sioux City, and Fort Worth, and that at several points provisions of the same general nature have been made the subject of an agreement between the parties engaged in the business of selling live stock for commission without the formal organization of an Exchange. The defendants herein either participated in the organization of said Exchange, or have since become members thereof, and have agreed, one with the other, to faithfully observe the articles of association, rules and by-laws thereof.

The officers provided by said agreement, have been elected and charged with the duty of enforcing said rules, but it is not true that said Exchange is engaged in any business at any point whatsoever, such business being done by the members thereof, each on his own account and to his own profit, or at his own loss, as the case may be. The business of said members is principally done at the Kansas City Stock Yards. Most of said members are engaged in selling, and sometimes in purchasing, live stock for a commission, and acting for others.

There are also a number of members who are engaged in managing and operating packing-houses and other enterprises, who are deeply concerned in building up and maintaining the high standing of Kansas City as a point to which live stock may be shipped for sale, or at which live stock may be bought under rules and regulations insuring honesty and fidelity, and under uniform and reasonable rules and at uniform and reasonable rates of commission, and that such facilities shall be maintained for conducting the sale and purchase of live stock, that persons desiring to sell or buy the same will find it to their interest to do so. Accordingly, the persons, last described, and others interested,

are also members of such Exchange, and each and every member thereof either voluntarily joined in originally establishing the same, or has since become a member thereof, and that at no time has said Exchange refused to admit as such member any reputable person who was willing to comply with the conditions of membership, and to abide by the rules of said organization.

It is true that, by reason of the high standing of the members of the Exchange individually, the guaranties afforded by the rules to which they have subscribed, the merit of the regulations for doing business which they have established, the reasonableness of the rates of commission which are charged, and the assurance that said rules will be promptly and efficiently enforced, and the usefulness and benefits of the facilities which have been provided, induce the greater part of the live stock, which is shipped to the Kansas City Stock Yards to be consigned to some commission merchant who is a member of said Exchange, to be sold by him for and on account of the owner thereof; and it is also true that, for the same reasons, the persons desiring to buy live stock at said stock yards, whether members of said Exchange or not, prefer to purchase from or by means of members of such Exchange, and thereby to secure the benefits and guaranties of the rules and regulations of said organization; and it is also true that the persons connected with said packing-houses, and other enterprises, desirous of buying cattle, who have become members of said Exchange have thereby agreed to observe the provisions of Rule XVI. of said Exchange, in their dealings.

But it is not true that thereby, and through such members, substantially, all of the business of buying and selling live stock at Kansas City is carried on. On the contrary, persons owning live stock and desiring to sell the same at said city are under no obligation whatever to employ a commission merchant or to employ a mem-

ber of said Exchange, but are at full liberty to act for themselves in making such sales, and said Kansas City Stock Yards Company extends to such persons all the privileges and facilities afforded by said company. So, too, any person desiring to purchase live stock at said city, or employed to make any such purchase, may, and they constantly do, deal with and buy from the owners direct, and any person who desires to buy cattle at said stock yards, although not a member of said Exchange,is at perfect liberty to purchase the same from any person whatsoever, and very much the larger part of the cattle purchased for the purpose of being fed and improved in condition are purchased without the intermediation or employment of any commission merchant whatever.

It is true, also, that a very large number of persons do business at said stock yards who are generally known as yard-traders, and who buy and sell on their own account, who are not members of said Exchange, and with whom said members deal not only freely, but cheerfully.

The only restriction upon members of the Exchange is that contained in Rule XVI., to-wit: that they will not deal with a person as commission merchant who violates the rules of said Exchange, or is a suspended or expelled member thereof.

Said commission merchants are in no wise concerned in the business of said Kansas City Stock Yards Company. Said company has sole charge of its yards and appliances, the only connection of members of said Exchange with said matters and said live stock being to execute the commissions entrusted to them, and to see that the interests of their employers are faithfully and conscientiously protected and furthered.

While it is true that very largely by the efforts of these defendants, the high character of said Exchange, the public confidence in the integrity of its members and the fairness and validity of its rules and regulations,

and the excellent character of the facilities provided by said organization, Kansas City is ranked next to Chicago as a point at which more live stock is handled than at any other point in the world, these defendants are informed by counsel, and believe, that said stock yards do not constitute a public market, but are of merely a private character. The live stock coming to said stock yards is placed in proper pens provided by said Stock Yards Company, and are therein yarded until a sale is negotiated, and the commission merchant selling the same has no control or direction as to the subsequent shipment, re-shipment, removal, or other subsequent disposition of said live stock.

It is not true that said stock yards afford the only available means or place in the territory mentioned in the bill of complaint, for the sale, purchase and exchange of live stock, but, on the contrary, much the greater portion of the live stock sold and purchased in said territory is by means of negotiations and transactions at points other than said stock yards, and without the interposition of any member of said Exchange; and it is only when any owner of live stock desires to ship his cattle to said yards, or an intending purchaser desires to purchase at said yards, that the facilities thereof are utilized.

With the exception of the firm of Greer, Mills & Company, which was first suspended from membership in the Exchange for non-payment of a fine imposed for a violation of the rules thereof, and which subsequently voluntarily withdrew from said Exchange, all of the commission merchants exercising their occupation at said Kansas City Stock Yards are members of said Exchange.

It is not true that a consignee of live stock is not permitted to sell or dispose of the same at said Kansas City Stock Yards, or that the members of such Exchange refuse to buy, negotiate or deal with a non-member thereof. On the contrary, as heretofore stated,

unless the person so offering said live stock for sale, is a non-member *commission merchant* violating the rules of said body, or one who has been suspended or expelled therefrom, said members will deal with any person whatsoever, not only freely, but cheerfully.

It is not true that an owner of live stock shipped to said stock yards, and refusing to employ a member of said Exchange, is compelled to re-ship the same to some other market; nor, indeed, is it true that if such owner should consign live stock to a commission merchant who was a non-member or a suspended or expelled member of said Exchange, that such re-shipment would become necessary, but such non-member commission merchant can sell the same either to a person not a member of such Exchange or willing to deal with such non-member commission merchant, or if such non-member commission merchant desires that a sale shall be made under the rules of said Exchange, any member of said Exchange will cheerfully serve him according to such rules.

The defendants say that there is no unlawful combination among them, or the members of such Exchange, nor is it true that any person is prevented from delivering live stock to the Kansas City Stock Yards, or that the sale of live stock is either hindered or delayed, or that any extra expense or loss to the shipper is entailed, or that any obstruction or embargo on the marketing of live stock shipped from any State or Territory whatsoever to said stock yards, is placed or created.

It is absolutely untrue that the Kansas City Stock Yards Company permits members of said Exchange alone to transact business at its stock yards. On the contrary, said Stock Yards Company permits any person whatsoever to transact business at its yards, who will pay the established charges of that company for its services in the premises, and, in point of fact, a very large part of the business done at said yards is trans-

acted by persons who are not members of said Exchange, and without the interposition of such member. There are more than one hundred persons engaged in buying and selling for themselves and on their own account, who have their offices and places of business at said yards, and who are not members of said Exchange, and with whom the members of said Exchange, as above stated, constantly deal, selling to and buying from them whenever the interests of their clients are served thereby.

It is the first aim and purpose of said members to serve their principals and to protect and advance their interests; but they submit that they are under no obligations to extend the privileges of said Exchange to a person who is a non-member thereof, who has violated its rules and been suspended from membership, and who has voluntarily withdrawn therefrom and announced his purpose to carry on his business as a competitor of the members of such Exchange, to the destruction of said organization and its rules, and to the injury of his competitors; and the defendants further submit that they cannot be compelled to deal with a non-member of their organization, or a person violating its rules, or who has been suspended for such violation, or who has withdrawn therefrom, or who has announced his intention to destroy said organization and to compete with the members thereof, nor, indeed, that said defendants can be compelled to deal with any person whatsoever, and they further submit that they had a right to establish said Exchange and now have a right to maintain the same, to agree to and observe the articles, rules and regulations hereinbefore set out, and to require an observance thereof on the part of their associates so long as they desire to retain the privileges of membership in said body.

They deny that any of said rules or by-laws are in restraint of trade or commerce between the States or otherwise, or that they were or are intended to create a

monopoly in contravention of the laws of the United States, or in any other way whatsoever. On the contrary, they charge that each and every one of said rules is in all respects legal and binding, and in harmony with the rules and regulations of Commercial Exchanges, which have existed for more than one hundred years, and which are now to be found in every city of importance in the United States and throughout the world.

It is true that all the members of said Exchange have agreed to be bound by and conform to the provisions of Rule IX., set out in the bill of complaint, in the sense that by violating the same they subject themselves to the penalties therein provided, and, in default of payment of a fine properly imposed for such violation, to suspension or expulsion from said organization, but they are free, at any time, to surrender their membership and to voluntarily withdraw from said body. The Board of Directors of said Exchange have not only enforced said Rule IX. against members of said Exchange, but have likewise enforced, in the manner therein provided, the other rules of said body, and on the whole, more members have been disciplined for violating other rules than for violations of said Rule IX.

The defendants deny that by the adoption of said articles of association, rules and by-laws, or by associating themselves together in said association known as the Kansas City Live Stock Exchange, or in carrying out the said articles, rules, and by-laws, or by the manner of conducting their occupation as commission merchants, or otherwise, they have conspired or confederated together in violation of any law of the United States whatsoever, or that they have agreed or confederated together to monopolize the business of buying and selling live stock at said Kansas City Stock Yards, or to illegally fix and establish a minimum price for buying and selling such live stock, or that they have,

in restraint of trade or commerce between the States, or otherwise, confederated together to prevent or restrain the free transmission of information respecting the state of the market of said Kansas City by telegraphic message or information to the various States or Territories mentioned in said bill of complaint, or any one of them, or that by the adoption or enforcement of said Rule IX. they, or either of them, have restricted the free employment of agents or solicitors in the prosecution of the occupation in which said defendants are engaged as live stock commission merchants, or otherwise.

The defendants say that the rates of commission established by them are the same as those which prevail in other cities where live stock is sold through the interposition of live stock commission merchants, and that the same are fair and reasonable, and refer wholly to compensation to be made for personal services to be rendered by the associates in the exercise of their occupation as commission merchants; that the provisions of said Rule IX., in reference to sending prepaid telegrams reporting the state of the market, other than reports to persons who have consigned live stock to said Exchange for sale, or who are desirous of purchasing live stock at said stock yards, and the provisions relative to the matter of solicitors to be employed by members of said Exchange, are not only proper and reasonable, but long experience has shown that such rules are necessary in order to prevent stealthy and unfair warfare between the members, and for the protection of the members from ruinous expenditures, and for the fair, proper and honorable conduct of said occupation.

The defendants say that the purposes of the organization of said Exchange and the adoption and enforcement of its rules and by-laws have hereinbefore been correctly set forth, and are not as charged in the bill of complaint. The persons who organized said Exchange, as well as those who have been added to the member-

ship thereof from the date of its organization to the present, recognize that it would be impossible to fairly and properly conduct the sale of live stock upon commission without the existence of proper rules and an organization to establish and enforce them. That the benefits and advantages thereof and the facilities provided thereby, have not only contributed largely to making Kansas City a desirable point for the sale and purchase of live stock, but have contributed more to maintain it as such and to attract customers thereto, than all other conditions combined, whereby the public has been and is being greatly benefited.

Experience has shown that to the success of such an organization, it is absolutely essential that there shall be a uniform schedule of reasonable commissions, and that all the members shall observe the same, and that by permitting evasions or violations of such schedule, a condition is created by which irresponsible persons might and would bring about a state of unhealthy cutting of prices, a practice unfair to shippers and purchasers and ruinous to responsible persons who carry on the occupation of commission merchants fairly and with due regard to the interests of the persons employing them, and to the standing and future of the said stock yards as a trading point.

The defendants admit that they desire to instill so great a degree of public confidence, to provide rules so fair and equitable and facilities so convenient, and at rates so reasonable, that persons desiring to ship cattle to said stock yards will be attracted to employ some member of said Exchange to act as his commission merchant in the sale and disposition thereof. They have no purpose, however, and have had none, to prevent the shipment and consignment of live stock to persons other than themselves, nor to compel shippers against their free wills, to pay them the commissions provided by the rules of such organization, nor from placing their property on sale at said stock yards, with-

out paying such commission. It is entirely optional with any shipper whether he will make such shipment, or employ a commission merchant, or place his property on sale at said yards; but the defendants admit that it is to the interest of every shipper of live stock to make such shipment and employment.

They deny that they have had or now have any purpose to monopolize the business of receiving, handling, selling, buying, or reshipping of live stock received at said stock yards, or raised in said States and Territories and shipped to said yards, or to prevent the sale of live stock at said yards by any person not a member of said Exchange, but they admit that their rules, regulations, facilities, and charges are such that it is greatly to the interest of such shippers and to the public that a member of such Exchange shall be employed as a commission merchant to effect the sale of said property. They have no desire to prevent any person from acting as a commission merchant in the sale of live stock at said Kansas City, but they admit that it is not to the interest of the public, or of any shipper of live stock, to employ such non-member, and that individually and collectively, the provisions of their articles of association, rules and by-laws are invoked for the purpose of preventing the success of any competitor, either in his effort to destroy said Exchange or to succeed in driving the competitors of such parties from the field.

Instead of having any purpose to obstruct or retard the owners of live stock in the sale and disposition of their property at Kansas City Stock Yards, their whole effort is to provide facilities for making such sales, to attract persons desiring to sell or to buy stock and to promote and increase the volume of business done at said yards.

They say that said Kansas City Live Stock Exchange has no control over or connection with any stock

yards at any other city to which cattle are reshipped or forwarded from said Kansas City.

This answer is verified by the officers and directors of the Exchange. (Record, 172, 173).

THE RULES OF THE EXCHANGE.

The decisive facts bearing upon the question whether the occupation of the defendants, or any portion of their doings, constitute interstate commerce, within the meaning of the Act of Congress referred to are hereafter outlined and further referred to at appropriate pages of the brief.

Should this feature of the case be determined, in whole or in part, in favor of the complainant's contentions, the guilt or innocence of the defendants, in respect of the matters charged in the bill will depend,to all practical intents and purposes, upon the validity of the rules and regulations of the defendant Exchange (Record, 17–72). Substantially all the allegations of the affidavits, in this behalf, will become immaterial if the rules and regulations referred to are adjudged to be valid.

These provisions may be fairly summarized as follows:

The preamble sets forth that the Exchange is organized "not for pecuniary profit or gain, *nor for the transaction of business*, but to *promote and protect* all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to promulgate and enforce among the members correct and high moral principles." (27).

Rule I. vests the government of the Exchange in a Board of Directors and certain officers and committees, for whose election provision is made. (27–29).

Rule II. defines the duties of the President. Among other things required he is to preserve order and busi-

ness decorum during all meetings of the Exchange, and to discipline any member or other person guilty of any disorderly, boisterous, or offensive conduct while in such meeting. (Section 2.) (29).

Rule III. imposes the duties of the President upon the Vice-President in case of the former's absence or disability. (30).

Rule IV. defines the powers and duties of the Board of Directors. The Board is to manage and conduct all the business and financial concerns of the association (section 1); to appoint the Secretary and Treasurer, and such other officers and employes as it may consider necessary (section 2); to require all appointees to faithfully perform their duties (section 3); and to make a full report of receipts and expenditures, and, if necessary, assess each of the members for the purpose of defraying the expenditures of the Exchange. (30-31).

When any member of the Exchange has failed to comply promptly with the terms of any business contract or obligation, or has failed to honorably adjust and settle the same, or has failed to promptly comply with and fulfill an award of the Board of Appeals or Board of Arbitrators, he shall be subject to suspension by the Board of Directors, and if such failure was merely from financial inability or misfortune, such member shall be reinstated after having adjusted his outstanding obligations (section 6); when any member shall be guilty of improper conduct of a personal character in any of the rooms of the Exchange, or of a willful violation of any business contract or obligation, and shall neglect or refuse to equitably and satisfactorily adjust or settle the same, or shall wilfully neglect or refuse to comply with the award of the Board of Appeals or Board of Arbitrators, or shall violate any of the rules, regulations and by-laws of the Exchange, or be guilty of any act of bad faith or any attempt at extortion, or any dishonorable or dishonest conduct, he shall be fined, censured,

suspended, or expelled by the Board, as it may determine from the nature and gravity of the offense committed, seven affirmative votes being, however, necessary to inflict expulsion (section 7); members are required to appear and testify on proper notice, and, for violating or neglecting to do so, and for refusal to answer proper questions, shall be subject to suspension (section 8); a suspended member may be reinstated by the Board (section 9); but an expelled member cannot be readmitted except upon payment of the required initiation fee, and upon satisfactory evidence that he is a fit person for membership, and upon an affirmative vote of at least seven members of the Board (section 10). Charges are required to be in writing, and to state the nature of the default, misconduct, or offense charged, and be signed by one or more members of the Exchange (section 11); and no member shall be disciplined without an examination by the Board, nor without an opportunity to be heard in defense. Notice, accompanied by a copy of the charges, must be served on the accused. (Section 12.) (Record, 31-34).

When the Board is advised by public rumor, or otherwise, that a grave offense has been committed by a member against the good name and dignity of the Exchange, or of any violation of its rules, it shall cause a preliminary or informal investigation to be made, and if a foundation therefor is discovered, charges shall be filed against the member (section 13); standing committees shall be appointed (section 15); special meetings may be called (section 17); vacancies may be filled (section 18); and if a director absent himself from six consecutive regular meetings of the Board without good excuse, the Board may declare his office vacant (section 19). Record, 34–36).

Rule V. prescribes the duties of the Secretary, and rule VI. the duties of the Treasurer. 36, 37).

Rule VII. fixes the duties of the Boards of Appeals and Arbitration. These bodies are required to construe

the rules of the Exchange "as being designed to secure justice and equity in trade, and all awards and findings shall be made in conformity therewith, in accordance with the laws of the land." (Section 1.) These Boards are to determine all matters voluntarily submitted to them by members of the Exchange, and the procedure to be observed in hearing controversies is outlined. (37–40).

Rule VIII. treats of membership. (40–42). Any person of good character and credit and of legal age, whose interests are centered at the Kansas City Stock Yards, may be admitted to membership upon the approval of at least seven affirmative votes of the Board of Directors, and upon the payment of an initiation fee of $2,500, or upon the presentation of a certificate of membership duly transferred, and by assenting and agreeing to abide by the rules, regulations and by-laws of the Exchange and all amendments made thereto (section 1); the transferee of a certificate may become a member upon payment of a fee of $25, and upon being approved by the Board of Directors (section 2). A member engaged in the commission business cannot serve another for compensation contingent upon the business done. Members engaged in the commission business shall register with the Secretary. "No member, or firm or corporation represented herein, shall do any portion of a commission business for any one not registered as above provided, except on a charge of full commission for such services." (Section 3.)

Every member of a firm, and the stock-holders of a corporation engaged in the commission business, must be a member of the Exchange. (Section 4.)

Rule IX. is devoted to the subject of commissions (42–46), and provides that:

a. The commissions to be charged by members for selling live-stock shall not be less than the rates enumerated (sections 1—6);

b. No member shall do business for a yard-trader

or speculator on this market for less than one-half the regular commissions (section 7);

c. No firm shall handle the business of a non-resident commission house for less than full commissions, except that consignments may be made direct to such non-resident from one of the following markets: Chicago, East St. Louis, St. Louis, Omaha, Wichita, Denver, Pueblo, St. Joseph, Sioux City, Peoria, Milwaukee, and Fort Worth, (other live-stock markets), (section 8);

d. No member shall cause or allow live-stock to be shipped in his name for the purpose of violating this rule (section 9);

e. The number of solicitors to be employed and their qualifications are prescribed (section 10);

f. Prepaid telegrams or telephone messages shall not be sent, except quotations to shippers of actual sales of their stock on that day, or to persons desiring to make purchases on this market (section 11);

g. Members violating these provisions shall be fined from $500 to $1,000 for the first offense and suspended from membership on failure to pay the same. For a second offense, the member may be expelled (section 12);

h. A reward of $500 will be paid for evidence showing such violation, payable on condition that a conviction is had (section 13);

i. A special fund of $500 is kept on hand to pay such reward (section 14); and,

j. Firms and corporations are responsible for violations by their representatives (section 15).

Rule X. requires assessments to be paid within 30 days after being made. (46).

Rule XI. provides for a special election in case an election has not been had at the time fixed for the regular annual meeting. (46). Rule XII. provides for a seal. (47).

Rule XIII. is devoted to the subject of a "quorum." (47).

Rule XIV. authorizes the Board of Directors to appoint special committees if deemed necessary. (47).

Rule XV. makes members responsible for the acts of their partners and employes in violating the rules. (47).

Rule XVI. is as follows: "No member shall transact any business with any person *violating any of the rules or regulations of this Exchange*, or *an expelled or suspended member*, after notice of said violation, suspension, or expulsion has been issued by the Secretary or Board of Directors." (47, 48).

Rule XVII. provides "for the creation and maintenance of a fund to employ requisite agencies for the protection of live stock transportation rates affecting the interests of patrons of this Exchange." (48).

Rule XVIII. provides that the responsibility of the seller, as regards inspection, shall cease on all live stock as soon as the same shall have been driven from the scale pen. (48).

Rule XIX. provides that inspectors for different cattle associations or individuals shall file their certificates of appointment with the Secretary. (48).

Rule XX. declares that any evasion of the terms or intent of these rules shall be deemed a violation thereof. (49).

Rule XXI. (49-50) provides that all members, who intend to pay for live stock purchased by dealers, shall file a list of such dealers with the Secretary, embracing a declaration to the effect that such member will pay for all the purchases of live stock made by the party or parties named therein. Having filed such declaration, the member is held responsible for any sum of money which a dealer, whose name appears in such list, may have agreed to pay to any member of the association until the same shall have been paid in full, or otherwise lawfully settled. (Section 1.) When a member desires to

cancel such an agreement, he shall notify the Secretary of the association. (Section 2.) Any member selling live stock for any dealer shall return the proceeds of such sale to the member who has guaranteed the payment of purchases made by such dealer. (Section 3.)

The inspection of hogs is provided for by a separate rule, and is committed to an executive committee of three, one selected by the buying interests, a second by the selling interests, and a third by the Kansas City Stock Yards Company, an arrangement which all interests concur in commending. (51–55.)

THE AFFIDAVITS.

The application for a temporary injunction was heard upon the pleadings and certain affidavits filed by the respective parties. These affidavits are exceedingly voluminous. It would burden this pamphlet unnecessarily to undertake to review them in detail. The complainant's affidavits in chief and accompanying exhibits cover pages 17 to 162, and pages 183 to 228 of the Record, and the affidavits in rebuttal are found on pages 229 to 259.

The defendants' affidavits are to be found on pages 176 to 182.

It is to be observed that the rebuttal affidavits were filed during the hearing, without any previous knowledge of their contents or existence on the part of the defendants, and, consequently, without an opportunity to make any further showing in respect of the matters therein referred to.

I. The sources of the live-stock sold at the Kansas City Stock Yards are set forth at length. Extended reference is made to the geographical situation of the yards, growing out of the accidental division thereof by a State line, and many instances given in which the presence of this line has resulted in causing negotiations and other steps leading to the consummation

of given transactions to be carried on partly in each of two States. (Record 147–151; 155–158; 205–211).

The relation of the defendants to the business is stated to be that "of buying and selling *for others for a compensation for services rendered.*" (Record, 197).

The practice of commission merchants of making loans to enable persons to purchase and feed cattle, to be subsequently sold, is explained. The lenders provide the funds, by endorsing and discounting the notes of the borrowers, which are secured by chattel mortgages on the property purchased with the loan, and discharged out of the proceeds of the ultimate sale. (Record, (147–152; 208).

A commission merchant consummates a sale to a packing house buyer by the delivery of a scale ticket and to others by delivering an order on the Stock Yards Company for the property sold. By these symbolical deliveries the title passes. (Record, 191).

Nearly all the cattle and substantially all the hogs sold at the yards are purchased by the local packing houses. (Record, 150, 154, 204).

The United States Inspection Bureau, on the presence of which the circuit court laid much stress, was instituted "to prevent the exportation and transportation *from one State to another* of diseased cattle, to thereby prepvent the spread of disease among native or domestic animals." (Record, 157).

The principal disease thus referred to is that which came under notice in Railroad Co. v. Husen, 95 U. S,. 465, and Kinnish v. Ball, 129 U. S., 217.

The Quarantine Regulations and other departmental instructions under the Act of Congress on the subject, (May 29, 1884; 23 Stat. L., 31), are shown on pages 218,222, 223 and 227 of the Record.

The Bureau for the Inspection of Food pertains to the products and operations of packing houses and is irrelevant to the occupation under consideration in this case.

DARK PAGE BLEED THRU

II. The affidavits filed by the complainants on the merits of the case, so to speak, consist largely of conclusions, vituperative denunciations, and hearsay. A few samples will serve as proof: "The misconduct and *wrongful acts* of the defendants (136); * * Greer, Mills & Co. were *boycotted* by the commission men and packers, members of said Exchange (136); * * (certain rules) are *contrary to public policy, prohibited by statute*, and *in restraint of trade* (200); * * (before the passage of the recent Kansas Statute) the Kansas City Stock Yards Company is of a public nature and *invested with a public interest* (205); * * the business is *essentially interstate* in its nature." (259).

Samples of hearsay are the letters and telegrams set out on pages 143-145, and the newspaper clippings on pages 233-235.

The explanation is found in the fact that the principal affiants were employees of Greer, Mills & Co. Thus, Norman B. Greer made three affidavits; James H. Thomson two; and William Winder (for statement of his connection with the firm, see advertisement, p. 180) and R. T. Bass each contributed one.

The affidavits of these parties cover 45 pages of the printed record, and if the exhibits thereto be added, 175 pages are thus covered, nearly *two-thirds of the entire Record*.

Hence it is, that the controversy between Greer, Mills & Company and the Exchange, and the resulting litigation are exhaustively stated. Briefly, that firm became a member of the Exchange; broke the rules they had agreed to observe; were fairly tried, found guilty, and subjected to discipline; their guilt is not denied and the regularity of the proceedings is admitted; they refused to pay the fines imposed, (not from want of means but from wilful obstinacy), and, in accordance with the provisions of the rule on the subject, they were regularly suspended from the privileges

of membership until such payment should be made. Three separate courts were successively appealed to for injunctions. Restraining orders were obtained on *ex parte* bills, each of which was dissolved on the hearing. The last ruling was in Greer v. Stoller, 77 Fed. Rep., 1, upon the announcement of which, the suspension being in full force, their certificates of membership were offered to be surrendered, and the offer accepted without prejudice to their status as members under a valid suspension. Then came this action in the name of the United States and a suit by Greer, Mills & Co., which is still pending in the State courts of Kansas.

The other affiants for the complainant are, as a rule, sympathizers of Greer, Mills & Co., the leading one being A. J. Gillespie, (Record, 152–159) whose partisanship is disclosed by the newspaper interview shown on page 235.

The burden of these affidavits is to show:

a. That Greer, Mills & Co., had been "boycotted" by the Exchange;

b. That the policy of the Exchange was to induce all live stock commission merchants to become members thereof, thereby establishing a "monopoly";

c. That the defendants sought to make it necessary for a shipper of live stock to employ some one of them, and to pay the compensation fixed by their rules, thereby preventing competition as to such rates.

1. The evidence to support the claim of a boycott (*not alleged in the bill*) is briefly this: After Greer, Mills & Co., had been suspended, members were notified of the fact and their attention called to Rule XVI. of the Exchange.

The relations between the parties are thus stated by Mr. Greer: "All the other live stock commission merchants at Kansas City are *competitors* of Greer, Mills & Co." (Record, 142), and the conduct of the defendants, characterized as a "boycott," was detailed to be:

While no restraining order was in force "the commission men at said Kansas City Stock Yards *refused to trade or deal in any manner* with the firm of Greer, Mills & Co." (Greer, Record, 135); Mr. Bass, after stating that the difficulties confronting his firm arose solely out of their non-payment of the fine assessed against them (and it may be noted that if the same was illegal and had been paid under protest, it could have been recovered back, at comparatively small expense, and this difficulty avoided), testified that while the suspension was in force, "as a general rule the packing houses and speculators *refused to purchase* from me as the representative of Greer, Mills & Co." (Record, 162).

"Posting" is thus defined by Mr. Thomson, cashier for Greer, Mills & Co.: "This is understood to mean that they (the members) shall *refuse to do business or trade with such member so posted.*" (Record, 199).

While the suspension was in force, Greer, Mills & Co. found no difficulty in disposing of consignments by employing a member in good standing (Record, 136, 137, 139). In one instance, *they refused to make such employment* and their conduct in reshipping to another market caused a loss, (136).

The other means resorted to were stated by Mr. Greer to be that the members "used the *moral influence* of the entire combination" (Record, 150); and these means are characterized by the others who deposed on the subject as "influence" (Record, 160, 199, 200, 212). Mr. Thomson added that "by the *mere force of numbers* and *the influence* each and all can bring to bear, etc." (Record, 204).

It is said that Rule XVI. "*practically makes a boycott* or prohibition upon any one trading at this market who refuses to be governed by Rule IX." (Record, 155); and Mr. Howard deposed that under XVI. a posting is "understood to be a direction from the Exchange *to refuse to trade or do business with* the member so posted." (Record, 215).

It is universally conceded that the purpose of the defendants is to make the Exchange a success, by requiring members to observe the rules which constitute the contract between them. Mr. Gillespie, admitting that he has signed an agreement to observe the rules (Record, 158), said that he could not trade with Greer, Mills & Co. because of the notice under Rule XVI., and that if he broke *his contract* he would be in danger of losing his membership (153). Mr. Plummer said that "in talking with members of the Exchange affiant learned that they consider *their agreement to abide by the rules* so strong and binding on them that they *refuse to do business* with such person or firm posted or antagonized by the Exchange and often go outside *to influence* others against trading with such person or firm." (189). Mr. Greer states that as the result of the enforcement of Rule XVI., "the said firm of Greer, Mills & Co. were practically shut out of the market at Kansas City, *so far as dealing with any packing house or member of the Exchange was concerned.*" (213).

While the corporations or firms owning packing houses, as such, are not members of the Exchange, memberships therein are held by managing officers, and by employees whose duties as buyers bring them in contact with the market (Record, 137, 154), all of whom are deeply interested in maintaining the high standing of the market built up by the Exchange. And, therefore, "the packing houses are largely *influenced* by the wishes of the Exchange." (155).

2. It is complained to be "the policy of said Exchange to require every person and firm doing, or attempting to do business, *as live stock commission men*, at said yards, *to take out memberships*, and that on their failure to do so the members of said Exchange are notified not to deal with said persons or firms." (Record, 145). "It would be very difficult for any commission man to carry on a commission business successfully without becoming a member of the Exchange." (158).

Although the complainant took the deposition of the Secretary of the Exchange and examined the minutes of the directors' proceedings in detail (Record, 183), only *two* instances were disclosed in which this policy was enforced. In the one case, Mr. Harris undertook to "carry speculators on commission" (a course of dealing in which Rule XXI. requires a guarantee of purchases, efficacy to which is given by sections 6 and 7 of Rule IV.). On being requested to take such membership, he seems to have concurred in the propriety of the suggestion and acted accordingly. (Record, 146, 184). It appeared from the Secretary's testimony that when such a suggestion was not complied with, as had been the case in several instances, "*no action whatever was taken.*" (185).

The other instance was that of a Miss Goodwin, who applied for membership on being requested. Her application was granted, but she did not pay the initiation fee. It was proposed and practically voted to present such membership to her as a *gratuity*, but because some few members did not concur, she refused to accept the same. The Board took no further action. (Record, 184–5; 195). Certainly, she was not "posted."

It appears from Mr. Greer's affidavit that he succeeded in selling a consignment direct to a purchaser, who had previously employed a member to act for him, without the slightest effort on the part of such member to interfere, although he witnessed the transaction and lost his commission as a result. (Record, 142–3).

It appears that, at least, Plummer (for 7 or 8 years), Chapin (for over 3 years), and Kennedy (for 5 or 6 years), had done business as speculators unmolested and without being approached by the Exchange. (Record, 186, 187, 197, 211).

3. It is said to be "very difficult" for a shipper to sell his cattle and to look after all the details attendant upon their inspection, feeding, watering, sale, weighing, and delivery, and the collection of the proceeds, without

employing an experienced commission merchant (Record, 159), and that such employment has become "a *necessity*," (206). Hence it is, that "nearly all" stock shipped to said yards is thus consigned. (160). It is not said that such employment is necessary in the *purchase* of stock. Certainly, the packing houses make no such employments, and that others may so purchase, acting for themselves, is shown by the incident detailed by Mr. Greer (142–3), and by the account given by Mr. Morris of the manner in which live-stock is paid for by the "commission merchant *or party* making the purchase." (191).

In addition of their sworn answer (which, under the 41st Equity Rule, as amended, has the force and effect of an affidavit, although an answer under oath was waived in the bill), the defendants filed two formal affidavits.

The one (Record, 176-181), protested that most of the matters stated in the complainant's affidavits "do not relate to, and have no bearing upon, the allegations of the bill of complaint, but consist of extraneous matters having reference to private controversies between Greer, Mills & Co. and the Exchange, or between said firm and individual members of the Exchange."

This affidavit explained that Greer, Mills & Co., having been disciplined and suspended, announced a purpose to destroy this Exchange and its usefulness, although its rules were practically literal copies of those prevailing at the Chicago Exchange, of which body the members of said firm were prominent members, several of them having held, and one of them now holding, official positions therein. (176-7).

Any "boycott," or purpose to resort thereto, was emphatically denied. It was shown that Greer, Mills & Co. had been industriously using the phrase to gain sympathy, to arouse prejudice against the Exchange, and to lay the foundation for evidence to be used in their several suits. The defendants have no thought of going outside of or beyond their rules (177), but

have treated the controversies as involving these propositions: (*a*), whether members of the Exchange will comply with the contractual rules, or elect to withdraw by dealing with Greer, Mills & Co., in preference to holding such membership; and, (*b*), whether Greer, Mills & Co., suspended members or competing non-members, are entitled to *compel* members in good standing to deal with them. (178).

A great majority of purchases of cattle to be further fed, known as stockers and feeders, are made without the services of a commission merchant and without regard to whether the seller is an Exchange member or not. (178-9).

The necessity for an Exchange was reiterated, and the reasons why those dealing at such a market concur in assisting it to maintain itself, are stated in full. (179). The occasions for enforcing the rules on the subject of honorable dealing, *i. e.*, enforcing a moral obligation on the part of members in favor of non-members, have been many times more numerous than the steps to discipline members violating the rules sought to be annulled in this case. (179).

Under the heading of "Some of the people who have made Kansas City the greatest live stock market in the world," the members and employees of Greer, Mills & Co. caused wood-cuts of themselves to be circulated, as recently as January 17, 1897, (after the institution of this suit), in connection with similar cuts of about 100 members of the Exchange. (180, 181). That the Exchange did so *make* the Kansas City market was admitted (181). An advertisement by Greer, Mills & Co., soliciting consignments and showing that they were likewise engaged in business at Chicago and St. Louis, was also offered. (180).

The other affidavit was in response to a statement made by Mr. Thomson (Record, 207) that "before the formation of the Exchange, and the adoption of its rules, the commissions charged were about one-half of

what they have been since," and was signed by a number of gentlemen, some of whom had acted as commission merchants at Kansas City as far back as 1871 (182). It was shown that, on the contrary, commissions had been *substantially reduced;* that the rates are not only conceded to be reasonable, but that they are as low as reputable persons can afford to render such services for; that from 50 to 70 per cent. of the amounts earned from this source are necessarily expended in properly conducting the occupation; and that, except in rare cases for a limited period, the result is no more than a living return, and that for the greater part the members of said Exchange are possessed of limited means only. (182). In the other affidavit it is shown that "the rates provided for are no higher than the fair and reasonable compensation for the services rendered and are the same as those which prevail at other stock yards." (180).

In rebuttal, a number of affidavits were permitted to be read to the effect that while, prior to the formation of the Exchange, "the ordinary commission was fifty cents per head" (229), yet a system of *secret rebates and discriminations* prevailed on the part of some of the commission merchants, by means of which favored shippers—especially large cattle companies—were able to obtain lower rates. Mr. Greer explained that this was accomplished by charging the full rates on account sales (for examples, see 240-249), and keeping a separate rebate account, or otherwise concealing the truth of the transaction. (237).

An exhaustive affidavit by A. Wagoner was also read, (253-259), in which the origin of the Chicago Live Stock Exchange was traced and an argument made against the "combination" and "monopoly" resulting from Exchanges. Unfortunately, in the absence of a disclosure of the relations borne by the affiant to Greer, Mills & Co., and because the affidavit was produced too late to permit a counter-showing and because the situa-

tion did not permit a cross-examination, the credibility of the witness cannot be satisfactorily considered. However, the tone of the affidavit sufficiently establishes the animus of the affiant in setting up his unsupported opinion (for not even the other employes of Greer, Mills & Co. expressed a concurrence therein) against what the brief will show to have been, in all civilized countries and for centuries past, the universal opinion of legislatures, courts, departmental officers, statesmen, political economists, and merchants, on the general subject discussed.

THE ORDER OF INJUNCTION.

In pursuance of and for reasons stated in an opinion, (Record 260, 277, and reported 82 Fed. Rep., 529), which is reviewed in the brief, the circuit court granted a temporary injunction to the following effect (Record, 277):

a. "The defendants, and each and *every one of them*, their agents, servants, and employes are hereby enjoined, *either as associates* in the Kansas City Live Stock Exchange *or otherwise*, from combining, by contract, agreement or understanding, *expressed or implied*, so as by their *acts*, *conduct* or *words* to *interfere with*, *hinder or impede others* in shipping, trading, selling or buying live stock that is received from the States and Territories at what is known as the Stock Yards at Kansas City, Missouri, and Kansas City, Kansas, and *shipped there from other States and Territories for sale there*, or for further transportation for sale in or shipment to foreign markets. * *

b. "The said defendants, *either collectively* as such Kansas City Live Stock Exchange, or through its Board of Directors, or *otherwise*, and *each of them*, their agents, servants or employes, be and they are hereby enjoined from enforcing or *recognizing or acting under* the following rules of said Kansas City Live Stock Ex-

change, towit, Rules 9 and 16, each and every section thereof and any and all amendments thereto, in respect to such live stock; and,

c. "From imposing or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange, *for trading or offering to trade with any person or persons* at said Stock Yards respecting the purchase and sale of any such live stock; or,

d. "From *discriminating in favor of any member* of said Kansas City Live Stock Exchange, because of such membership; and,

e. "Especially from *in any manner discriminating* against ANY PERSON trading at said Stock Yards in such live stock; and,

f. "From refusing, by united or concerted action, or *by word, persuasion*, threat *or other means*, to deal or trade with persons, with respect to such live stock, who are not members of said association, because of such non-membership; or,

g. "*In any manner, from interfering with* the right and freedom of any and all persons trading and desiring to trade in such live stock at said Stock Yards, *the same as if such Kansas City Live Stock Exchange did not exist.* * *

h. "The defendants, and each of them, their servants, agents and employes, be and they are hereby enjoined and prohibited from entering into any contract, agreement, combination or conspiracy *fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock*, shipped from one State or Territory for sale or disposition in another State or Territory;

i. "Also, from entering into any contract, agreement, combination or conspiracy limiting or attempting to limit the right of any person in business at said Kansas City Stock Yards *to employ labor or assistance*

in soliciting shipments of live stock from other States or Territories, or,

j. "The right of any such person to *send telegrams, pre-paid or not*, from said Stock Yards to any other State or Territory."

An appeal was granted, and a supersedeas allowed (Record, 278, 279, 285, 286).

ASSIGNMENT AND SPECIFICATION OF ERRORS.

The assignment of errors challenges the correctness of the action of the circuit court upon twenty-five grounds, all of which were duly assigned, most of them at length (Record, 279–284).

The scope of these assignments can readily be gathered from the propositions advanced in the several paragraphs of the accompanying brief and argument. The propositions thus contended for embody the converse of the conclusions of the circuit court, and, for convenience and because it is believed that thereby a clear understanding of the questions involved can be had, the appellants specify as error the action of the circuit court in *not holding* the propositions referred to, which are substantially as follows:

1. The defendants are not engaged in interstate commerce.

2. The defendants' occupation constitutes merely an aid to commerce; at most, their rules have only an indirect or incidental effect thereon; their charges are merely for services rendered and facilities provided, locally; and when live-stock has been unloaded at the Kansas City Stock Yards, for sale to the public generally and in quantities to suit the purchaser, it is no longer a portion of interstate commerce, though shipped from another State, and though solicited, in such other State, to be so shipped by the commission merchant employed to sell the same, and though the purchaser may intend to thereafter reship the same to another State.

3. The Act of Congress of July 2, 1890, was not intended to transform the many Exchanges existing in the United States into unlawful combinations and their members into criminal offenders.

4. Exchanges do not constitute combinations or conspiracies in restraint of trade. On the contrary, they promote and facilitate it.

5. An Exchange is not a monopoly, in a legal sense, not being engaged in any business whatever; and its rules are merely a code of usages for the orderly conduct of the occupation of its members, and an agreement in respect of the manner of conducting the same honorably, and with uniformity, to the end that trade may be promoted and every interest protected and benfited.

6. An Exchange is a merely private body. The occupation of a member is emphatically private. Membership is a matter of contract. No one is entitled to the privileges thereof unless he be a member in good standing; and it is lawful to thus limit such privileges, and to refuse to have business intercourse with suspended or expelled members, or with non-members.

7. It is lawful for an association of persons engaged in a private occupation to agree not to deal with a competitor, and they may even persuade, or use their influence to induce, others to act with them in such refusal.

8. It is lawful for an association of persons engaged in such private occupation to agree on a schedule of wages or commissions and to require fellow-members to keep their contract to adhere to the same. It is also lawful for the associates to agree upon the manner of carrying on their occupation in respect of the employment of solicitors, the sending of prepaid telegrams, and the division of commissions with persons engaged in a similar occupation elsewhere and who may seek their co-operation.

9. The case of United States v. Trans-Missouri

Freight Asso., 166 U. S., 290, does not decide that the defending Exchange, or any of its rules, are violative of the Act of Congress referred to.

10. Said Act can only be applied to contracts which are actually—in distinction to constructively—in restraint of trade or commerce among the States.

11. If each and every contract concerning or affecting such trade or commerce, or the manner of conducting it, is construed to be prohibited by the said Act of Congress, the statute is made violative of the Fifth Amendment to the Constitution of the United States, in that it will operate to deprive the defendants of liberty and property without due process of law, and as a "legislative judgment."

12. A mere association or combination of persons engaged in a private occupation for the purpose of facilitating trade or of benefiting themselves, is not illegal. There is no evidence in this case of a resort to, a "boycott," threats, or other unlawful means. The fact that competitors are not supinely permitted to succeed does not prove a conspiracy.

13. Isolated acts by individual members against persons who are commercial competitors cannot be made the basis of destroying the Exchange as an entirety.

14. The opinion and order of the circuit court, in effect, adjudicate a private controversy between Greer, Mills & Co. and the defendant Exchange, a matter not alleged in the bill, and which cannot be litigated in a civil proceeding instituted by the United States. As to such private matter, the defendants cannot be deprived of their constitutional right to a trial by jury.

15. It appearing that this proceeding was prosecuted in a private interest and for the promotion thereof, and was instigated by private malice, it should have been dismissed as an imposition on a court of conscience.

16. It was error, upon the facts disclosed by thi Record, to issue a temporary injunction, *mandatory i form*, and operating, to all intents and purposes, as *final decree*.

17. The bill should have been dismissed.

Stating our specifications of error affirmatively, th circuit court erred in respect of each and every claus of the order of injunction from which this appeal i prosecuted, for reasons particularly stated in the assign ment of errors and elaborated in the accompanying brief, to which reference is made for a detailed state ment of the positions of the appellants in reference t said order.

BRIEF AND ARGUMENT.

NOTE.—Owing to the importance and nature of the questions involved, and to the fact that because of the novelty of many of them, there is a lack of text-books, or other condensed discussion, precisely devoted to many of the matters herein considered, this document, (necessarily, perhaps; pardonably, it is hoped), has become quite voluminous. In view of that circumstance, and in the hope that thereby the propositions discussed and presented can be the more readily referred to, and the labors of the Court correspondingly lightened, a *Table of Contents* has been prefixed, to which attention is respectfully invited.

I.

THE ACT OF CONGRESS OF JULY 2, 1890, APPLIES, AND CAN CONSTITUTIONALLY BE MADE TO APPLY, ONLY TO SUCH MATTERS PROHIBITED THEREBY WHICH CONSTITUTE **Interstate Commerce**; AND

THE DEFENDANTS ARE NOT ENGAGED IN SUCH COMMERCE.

As these propositions, in effect, involve the element of jurisdiction, it is proper to consider them *in limine*.

1. The Act in question does not deal with contracts in restraint of trade as such, nor was it intended to apply to monopolies or attempts to monopolize merely because of their effect on interstate commerce. Its

scope is to denounce contracts and combinations whose object and necessary consequence are a restraint upon or monopoly of such matters as *of themselves constitute such commerce in the legal sense.* Be the *effect* on interstate commerce ever so great or oppressive, if this be merely *incidental* to the contract or combination in question, the statute is not only inapplicable, but could not constitutionally be made to apply, for want of jurisdiction on the part of Congress over the subject.

United States v. E. C. Knight Co., 156 U. S. 1.

This authoritative construction of the Act in question may be fairly summarized as follows:

a. It can only be applied to such matters as of themselves and directly constitute interstate or international commerce. (10.)

b. It does not amount to a declaration by Congress of a purpose to regulate all commerce, but has reference only to those matters over which Congress has, by other enactments, assumed to exercise authority by providing regulations. (11, 12, 16, 17.)

c. The intent of a producer that a given article shall be shipped to another State, and thus become the subject of interstate commerce, does not bring a contract affecting such article within the terms of the Act or the power of Congress. (13.)

d. That the purchaser of an article, which has been the subject of interstate transportation, or of such a commercial transaction, intends to transport such article into another State, or to make it the subject of further transactions of interstate commerce, is likewise immaterial. (14).

e. Where the result of the contract or the attempted monopoly, in respect of interstate commerce, is "*indirect, however inevitable* and *whatever its extent*," it does not fall within the Act. (16).

f. "Slight reflection will show that if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive

industries, whose ultimate result may affect external commerce, comparatively little of the business operations and affairs would be left for State control." (16.)

g. Although in such a case as this, the article has actually been "forwarded to other States for sale," and "in order to dispose of the product, the instrumentality of commerce was *necessarily invoked*," this has no tendency to prove that a contract concerning such article was intended to restrain or to monopolize the "*commerce*" therein; at most, such a contract only *incidentally* and *indirectly* affects that commerce. (17.)

h. The dissenting opinion of Mr. Justice HARLAN summarized the ruling of the court to be that it is, "in effect, held that the statute would be unconstitutional if interpreted as embracing such unlawful restraints upon *the purchasing of goods in one state to be carried to another* as necessarily arise from the existence of combinations formed for the purpose and with the effect not only of *monopolizing* the ownership of all such goods in every part of the country but of *controlling the prices* for them in all the States," (42, 43), and that the Act does not reach combinations to control "the price of articles purchased to be transported from one State to another State," (43.)

When the case was decided in the Circuit Court, it was said: "It is the stream of commerce flowing across the States and between them and foreign nations that Congress has authority to regulate. To prevent *direct interference* with or disturbance of this flow alone, was the power granted to the Federal government. Congress has, therefore, no authority over articles of merchandise, or their owners, or contracts or combinations respecting them, which have not entered into this stream, or having entered, have passed out."

United States v. E. C. Knight Co., 60 Fed. Rep., 306, 309, 310.

The opinion of the Circuit Court of Appeals af-

firmed these views, (60 Fed. Rep., 934,) and proceeded in acceptance of the construction placed upon the Act in question soon after its passage, in a carefully prepared opinion from the pen of Mr. Justice JACKSON, universally recognized as a very great authority in matters of interstate commerce.

In re Greene, 52 Fed. Rep., 104, 112-114.

In a very recent case on the subject, the cases are elaborately reviewed and critically analyzed, and the distinctions established by the decisions of this Court thus lucidly expounded:

"It will be readily seen that the cases recognize the distinction between *the subjects of commerce* and *commerce itself*, as well as between the instruments of and *aids to such commerce*, and the *actual business of commerce*. In regard to State legislation, it has been declared from the beginning that, to render such legislation subject to constitutional objection under the commerce clause, the effect of the legislation upon interstate commerce must be *direct*, and not *incidental* or *indirect*. This general statement of the law, so often repeated, has been illustrated by the varying facts of many cases. * * In considering a question of this delicate nature, proper and practical distinctions become extremely important. *A particular business must be distinguished from the mere subjects of the business and from mere incidents to or instruments by which the business is carried on.* (718, 719.) * * * Federal authority exists only when a monopoly or a contract in restraint of trade assumes such form or has such effect as to * * interfere directly or substantially with interstate commerce, or commerce with foreign nations; and this it must do *directly* and *not indirectly*." (722, 723.)

United States v. Addyston Pipe Co., 78 Fed. Rep., 712.

2 The contentions of this complainant are that the defendants are engaged in interstate commerce, in the

sense declared by the authorities, for reasons which may be summarized, so as to bring all the details of the argument under general heads, as follows:

a. The Kansas City Stock Yards, at which these defendants exercise their occupation, are situated on both sides of the State line between Kansas and Missouri.

b. Live-stock is shipped to said yards for sale from many States and Territories, and the purchasers thereof, in many instances, subsequently drive or transport the same to other States.

c. A commission merchant, at times, opens negotiations with a purchaser in one State concerning live-stock then located in pens situate in another State.

d. The course of trade is such that at times, the negotiations and the steps for consummating a contract of sale are carried on or taken partly in each of two States.

e. The defendants use the telegraph in their business and this, when running from one State into another, is engaged in interstate commerce; and also employ solicitors to travel into other States and solicit consignments.

f. At times live stock is shipped to a commission merchant in one State, by virtue of his attitude as a mortgagee thereof, from an owner (mortgagor) residing in another. At other times, drafts are drawn by a consignor in one State on a commission merchant resident in another.

g. A consignment of live-stock remains an "original package" until actually sold and delivered, to the extent that all third persons rendering services in connection with such sale and delivery are engaged in interstate commerce.

If any other contentions are relied on, it is believed and submitted that if they are not mere variations of the points enumerated, they are covered by and can be determined in the light of the cases herein cited.

Some of the matters referred to can be readily solved and laid out of further consideration.

Location of the Kansas City Stock Yards.

That the location of these yards, however unique from a geographical standpoint, does not have the effect to make all business there done, *per se*, interstate, was decided by trial court in Cotting v. Stock Yards Co., 79 Fed. Rep., 679, 682; and its ruling was subsequently reiterated by Judge Thayer, in the same case, (82 Fed. Rep., 839, 852). This was also conceded in the pending case. (Record, 271.)

A moment's reflection will demonstrate that in such a case the accidental location of a place of business on both sides of a State line cannot have the effect to make it, of itself, an habitat of interstate commerce, where no State law can have operation. If the building were a store similarly situate, would the owner be exempt from local taxation? Or if it were a place for the sale of oleomargarine, or other article, (not within the purview of the Wilson Bill), the sale of which is prohibited or regulated by many of the States, could the seller laugh defiance at the State authorities? If the argument of counsel on this branch of the case were correct, property lying along State lines would soon reach *a fabulous valuation.* Grain elevators, gas and water companies, and other enterprises affected with a public use, would escape all State regulation of charges or rates, and every species of local taxation, by the simple expedient of building a part of their structures or plants in each of the two States. The conclusion must be that in such a situation some of the business is done in one State, the remainder in the other; but that none of it is interstate, *i. e.*, carried on in *neither* state, but solely and alone as a Federal transaction.

THE DEFENDANTS' RELATIONS TO COMMERCE.

The attitude and occupation of these defendants cannot justly be treated as bearing the same relation to commerce as does a railroad train, a vessel, a ferry-boat, or a bridge leading from one State to another. Transportation or carriage by means of or over these often constitutes commerce itself. These defendants are not engaged in commerce. At most, they are *mere aids* thereto.

Whatever may be the bearing of the recent case of United States v. Trans-Missouri Freight Asso., 166 U. S., 290, in other respects, there is one point concerning which that case is without dissent and conforms to the unbroken current of authority: it is made an imperatively essential element to the maintenance of an action under the Act of Congress in question that the contract under attack must *directly* involve the ingredient of interstate commerce. As applied to the facts of this case, this presents the inquiry whether the defendants—the persons who have agreed to observe the rules under consideration and who, therefore, are the only persons who can be claimed to be restrained thereby—are engaged in interstate commerce. As will be shown under a subsequent paragraph, there is, in this case, no element of unlawful means, such as would constitute an interference with commerce within the rules of *Ex parte* Debs, 158 U. S., 568, and kindred cases. If it be said that non-member brokers are restrained in their effort to successfully compete with the defendants, the case is not changed; for the Act could not apply in that event, unless those persons were likewise engaged in interstate commerce,—even though such private interest could be litigated in a civil action instituted (nominally at least) by the Government, a proposition hereinafter considered.

The distinctions between matters which constitute "*commerce itself*," and those which are mere *incidents*

thereto, and between alleged interferences which *directly* affect interstate commerce, and those which do so only *incidentally* or *indirectly*, are fundamental, and this Court has strongly impressed that they should never be lost sight of.

Hooper v. California, 155 U. S., 648, 655;
Henderson Bridge Co. v. Kentucky, 166 U. S., 150, 154.

It was doubtless in specification of this distinction that the opinion in the Trans-Missouri case, 166 U. S., at 313, was so careful to prescribe, as a vitally essential element, that a given contract, in order to fall within the Act, must, "*by its direct effect*, produce a *restraint* of (interstate) trade or commerce."

It so happens that the case which is universally referred to as first establishing this distinction is literally in point, and it has special bearing because it actually used the status of a *broker* performing services of the same character as do these defendants, as a decisive illustration. That case was decided by the Court at a time when the construction of the commercial clause of the Federal Constitution was a matter upon which the judges were usually widely divided in opinion and one which had recently been the subject of many arguments and of discriminating consideration. (See the License Cases, 5 How., 504, and the Passenger Cases, 7 How., 283.) In the latter case, Mr. Justice McLEAN had instanced that although a particular service or agency might, to some extent, affect property which was the subject of interstate commerce, as the construction of a ship or stage, such service or agency was not within the commercial power of Congress. (7 How., at 402.)

Great weight is, therefore, to be given to the ruling made in a case which involved the question whether a person engaged in dealing exclusively *in foreign exchange* was subject to a local license law, the contention being that he was engaged in interstate commerce. The unanimous opinion of the Court was delivered by Mr.

Justice McLEAN. It was ruled that a given business might "be an *aid* to commerce," without being "*commerce itself*," nor an article thereof. The status of a *cotton broker* handling that product at New Orleans, precisely as these defendants handle live-stock at Kansas City, was defined, by way of decisive illustration: "*He is not engaged in commerce*," but merely supplies an aid to or facility of commerce, the use or existence of which has only an incidental or indirect effect thereon.

Nathan v. Louisiana, 8 How., 73, 81.

It cannot be doubted that an association of dealers in foreign or interstate exchange, by way of a Clearing House or the like, fixing rates of exchange and interest, and the charges for making collections, would not be said to come within the Act of July 2, 1890, nor their rules to constitute a contract concerning commerce itself. And yet, *the cotton broker selling cotton raised in another State for export to a foreign country* is declared to occupy the same attitude; and so must a broker who negotiates sales of *live-stock*. The nature of the commodity is, self-evidently, immaterial.

SERVICES RENDERED AND FACILITIES PROVIDED.

The distinction between commerce itself and restraints thereon, on the one hand, and services rendered and facilities provided for the transaction of commerce, on the other hand, runs through and is supported by numerous cases, in many of which the difference between an *occupation*, and *trade or commerce*, has also been considered. It is to be observed that these cases treat of the subjects of contracts in restraint of trade and of monopolies; some were decided under Anti-Trust statutes; and most of them, indeed, treat of the very subject of interstate commerce.

Thus, Lord ELDON held, considering an objection to a contract in reference to the services of an author

on the ground that it was in restraint of trade: "*The case of trade is perfectly distinct.*"

Morris v. Colman, 18 Vesey, 437;
National Benefit Co. v. Union Hospital Co., 45 Minn., 272, 276.

Mere services rendered by persons exercising an occupation do not constitute trade or commerce within the meaning of Anti-Trust statutes.

Queen Ins. Co. v. State, 86 Tex., 250;
State v. Phipps, 50 Kas., 609, 615, 620.

And in considering the precise subject of interstate commerce, it has been decided that the services of a railroad company in switching cars to or from warehouses, mills, and other places of business, although such cars contain freight coming from or intended to go into another State, do not constitute such commerce, but are *merely charges for services rendered locally.*

Chicago etc. Ry. Co. v. Becker, 32 Fed. Rep., 849, 854.

Of a similar situation, Mr. Justice JACKSON held that the company "is not only a transfer company or agency engaged in performing *a switching service*, for which it demands and receives from the party for whom such service is rendered, not traffic rates on the freight distributed or transferred, but simply a charge for the shifting of cars, loaded or empty, from one line or connection to another," which did not make it an agency of interstate commerce, although the cars were loaded with interstate freight. (615–9).

Kentucky etc. Bridge Co. v. Louisville etc. Ry. Co., 37 Fed. Rep., 567.

This Court, in a large number of well-considered cases, has firmly established that charges for services rendered in and about the transportation and sale of interstate shipments neither constitute a part of the commerce therein, nor a restraint upon or impediment to the same.

The question has arisen under a variety of circum-

stances. And it deserves to be particularly noted that in nearly every instance the article in question was in its "original package," and in other respects fully within the rules so strenuously invoked by this complainant.

Thus, in the leading case of Brown v. Maryland, 12 Wheat., 419, after declaring that the right to bring an import into this country carried with it the right, as part and parcel of the privilege acquired by the payment of the custom duties exacted, to sell the article, so long as it was in its original package and had not become mingled with the general mass of the local property, Mr. Chief Justice MARSHALL pointed out that this did not authorize the importer to carry the article from place to place and to thus offer it for sale. He then proceeded:

"So if he sells by *auction*. Auctioneers are persons licensed by the State, and if the importer *chooses to employ them, he can as little object to paying for this service, as for any other for which he may apply* to an officer of the State. The right to sell may very well be annexed to importation, *without annexing to it, also, the privilege* of using the officers licensed by the State *to make sales in a particular way*."

Brown v. Maryland, 12 Wheat., 419, 443.

While the illustration given involved the element of a license from the State, this was in no wise in the way of a limitation. It is quite as true to say that the importer cannot refuse to pay for the services of any person, whether required to be licensed by the State or not, whom he chooses to employ to assist him in making sale or to facilitate the disposition of his property. For instance, the *drayman* employed to carry the goods to a warehouse or storeroom; the *owner of the premises* rented as the place of storage or sale; the *weighmaster* invoked to weigh the goods; the *newspaper publisher* who advertises the property for sale; the *watchman* charged to protect it; the *insurance company* issuing a

policy covering the articles; the *broker or commission merchant* whose services are invoked to find buyers or to negotiate sales; the *clerk* who makes or records sales, or the *attorney* who prepares the contract evidencing the disposition of the import; or the *banker* who provides the funds to make payment therefor; none of these persons would be engaged in interstate commerce. None of them, by refusing to serve the importer, could be said to be obstructing or impeding such commerce; and none of them, because of their membership in an association fixing the drayage rates, rents, weighing charges, advertising rates, wages, insurance premiums, commissions, fees, or rates of exchange or interest, to be charged by them, respectively, could be said to be within the Act of Congress. Nor, because their services were desirable or even essential, "however inevitable and whatever their extent," (156 U. S., at 16), could any of them, or all of them combined, be said to be guilty of an attempt to monopolize foreign or interstate commerce.

Trade Mark Cases, 100 U. S., 82, 95.

In each of these instances, the compensation demanded would not be a burden upon commerce, "but a *compensation* for the increased facility afforded," or "for services rendered."

Passenger Cases, 7 How., 283, 403;
State Freight Tax Case, 15 Wall., 232, 278.

Such services would not possess at least one of the absolutely essential elements of interstate commerce: that the thing in question must be the "subject of *trade and barter* offered in the market as something having *an existence and value independent of the parties to them*;" it must be "an article of commerce—a *commodity* to be shipped or forwarded from one State to another and then put up for sale." This description cannot be applied to mere personal services, a contract for which is non-assignable and cannot be bartered or sold,

but occupies, in this respect, precisely the same status as an insurance policy.

Paul v. Virginia, 8 Wall., 168, 183.

COMPENSATION FOR FACILITIES PROVIDED OR SERVICES RENDERED.

In Woodruff v. Parham, 8 Wall., 123, the test, which counsel for the complainant have declared to be, and which the Circuit Court accepted as, a *decisive* one, *i. e.*, whether *the taxing power* of a State could be exercised under the particular circumstances came under consideration. It was ruled below that the State could not tax the live-stock while at the Stock Yards, nor exact a license from the commission merchant employed to sell it for the non-resident owner. We shall notice the right to tax the property under such circumstances later on. It is to be noted, however, that the *owner of property* may be engaged in interstate commerce, and *the property itself* be the subject thereof, without having the effect of subjecting a *person employed* to feed and water it, *en route* or at destination, or to make sales of the same, or to render other services in respect thereof, to a similar status. Woodruff v. Parham, (and there are many cases following it), upheld the right of the State of Alabama to tax *auctioneers* who "received, in the course of their business, for themselves, (*ex. gr.*, because they held a chattel mortgage on the property or had paid a draft for its approximate value, with a bill of lading attached), or *as consignees and agents for others*, large amounts of goods and merchandise, the products of States *other than Alabama*, and sold the same in Mobile to purchasers in the *original and unbroken packages*."

At this point it is proper to note that such cases as Welton v. Missouri, 91 U. S., 275, Cook v. Pennsylvania, 97 U. S., 566, the Dressed Beef Cases, 136 U. S., 313, and others of the same character, rest upon the

essentially distinct ground of a *discrimination*, by means of State legislation, against the products of a foreign country or a different State, as such, and that the rules there laid down have no application to the general question discussed in Parham v. Woodruff and kindred cases.

Guy v. Baltimore, 100 U. S., 434, 442, 443;
Emert v. Missouri, 156 U. S., 296, 314, *et seq.*;
Plumley v. Massachusetts, 155 U. S., 461, 468–471.

Recurring to the cases not involving the element of such discrimination, it will be found to be conclusively established that charges for pilotage, wharfage, the use of an artificial canal or lock, and the like, though exacted from vessels or goods in course of being moved from one State to another, do not amount to a prohibited regulation of commerce, nor are the parties making such charge, in consequence, engaged in interstate commerce. "*A charge for services rendered or for conveniences provided is in no sense a tax or a duty*," nor a hindrance or impediment to commerce, whether exacted by a State, municipality, or private person. "It is *in no sense* a regulation of commerce between the States," and likewise a "mistaken assumption" that such charges "are *restraints* of commerce."

Packet Co. v. Keokuk, 95 U. S., 80, 84, 85, 88;
Packet Co. v. St. Louis, 100 U. S., 423, 429;
Vicksburg v. Tobin, 100 U. S., 430, 432;
Packet Co. v. Catlettsburg, 105 U. S., 559, 562;
Transportation Co. v. Parkersburg, 107 U. S., 691, 698;
Head Money Cases, 112 U. S., 580, 596.

Be it ever so necessary for the owner to invoke such services in order to successfully conduct an interstate commercial transaction, for *essentiality* is not the test, nor even an element, in determining the question.

McCall v. California, 136 U. S., 104, 111.

" Reasonable charges for the use of property, either

on water or land, are not an interference with the freedom of transportation between the States secured under the commercial power of Congress."

Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196, 217;

Johnson v. Chicago etc. Elevator Co., 119 U. S., 388, 400.

Such charges, whether they be for the use of an inanimate or stationary object or for the services of a person having a given occupation, (State v. Applegarth, 81 Md., 293), are merely a "compensation for facilities provided."

Huse v. Glover, 119 U. S., 543, 548;

Ouachita Packet Co. v. Aiken, 121 U. S., 444, 447.

Such services and facilities are regarded as materially *advancing* and *benefiting* commerce and, therefore, as being in no wise an obstruction, hindrance or *restraint.*

Atlee v. Packet Co., 21 Wall., 389, 393;

Packet Co. v. St. Louis, 100 U. S., 423, 427;

Vicksburg v. Tobin, 100 U. S., 430, 432.

A private contract on the subject is not open to criticism, though it may indirectly affect commerce among the States.

Railroad Co. v. Richmond, 19 Wall., 584, 589;

Transportation Co. v. Parkersburg, 107 U. S., 691, 699.

Matters Incidentally Affecting Commerce.

This distinction is recognized in many of the cases usually cited on this general subject.

Thus, the States "may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution," by acting "upon the business *through*

the local instrumentalities to be employed after coming within the State."

Hall v. De Cuir, 95 U. S., 485, 487, 488, 489.

Such local action "though necessarily, more or less, affecting interstate commerce," in a legal sense, does so only "incidentally."

Ouachita Packet Co. v. Aiken, 121 U. S., 444, 447;

Leloup v. Mobile, 127 U. S., 640, 649;

Kidd v. Pearson, 128 U. S., 1, 23.

Where the matter consists of a charge for services rendered "there is in such a transaction only *an exchange of money for its supposed equivalent,* * * *merely compensation for benefits conferred.*"

Sands v. Manistee River Imp. Co., 123 U. S., 288, 293–294;

Monongahela Nav. Co. v. United States, 148 U. S., 312, 332–333.

In Bowman v. Chicago etc. Ry. Co., 125 U. S., 465, it was distinctly declared that "the local instruments to be employed after coming within the State" constitute no part of interstate commerce, (486), and that local "regulations designed to *aid and facilitate commerce*" cannot be declared to operate as impediments thereto. (498.)

A tax on the earnings of a commission merchant realized out of sales of property *belonging to non-residents* is not taxation of interstate commerce. "If it can be said to affect such commerce in any way, it is incidentally, and so remotely as not to amount to a regulation thereof."

Ficklen v. Shelby County, 145 U. S., 1, 21, 24.

If the goods there in question had actually *been consigned to the commission merchant for sale generally*, and to any person who might desire to purchase them, and had been delivered by such commission merchant directly to the purchaser, there would have been no room for doubt or dissent. As shown by the cases

hereafter cited, the difficulty in that case arose from the fact that the goods were *in the State of the owner when sold and were shipped by such owner direct to the purchaser*, pursuant to a previous contract of sale.

A rental charged for the use of its streets by a city against a telegraph company—a Federal agency and engaged in interstate commerce—is not a regulation of commerce, but merely a compensation for property occupied.

St. Louis v. Telegraph Co., 148 U. S., 92, 97, 98.

Stock Yards have been judicially declared to find their closest analogy in grain warehouses.

Delaware etc. R. Co. v. Central Stock Yards Co., 45 N. J. Eq., 50; 46 N. J. Eq., 280.

Hence, the ruling of the Court, in disposing of the contention that the services of a grain warehouseman in storing, handling, cleaning, and elevating grain, which was at the very time the subject of interstate commerce, (particularly in the case of the floating elevator described in 143 U. S., at 529, 530), did not constitute a part of such commerce, but stood upon the same basis as *wharfage rates and the like*, is directly in point.

Munn v. Illinois, 94 U. S., 113, 135;
Budd v. New York, 143 U. S., 517, 545.

Applying this doctrine, a learned State court directly held that mere services rendered in and about property, though it be at the time the subject of interstate commerce, were not a part of such commerce.

Stone v. Yazoo etc. R. Co., 62 Miss., 607, 639, 640.

This ruling was approvingly cited here, and it is worthy of particular note that this phase of the matter has never been questioned in any of the earnest and elaborate dissents in the cases involving the validity of State legislation regulating the charges of warehouses, and the like.

Budd v. New York, 143 U. S., 517, 541, 542;

Brass v. North Dakota, 153 U. S., 391, 401.

In a still later case it was said that "the interference with the commercial power must be direct and not the mere incidental effect" of a contract made between a landlord and tenant, or principal and agent.

Erie Ry. v. Pennsylvania, 158 U. S., 431, 439.

This ruling was in terms reiterated in the most recent case on the subject.

Henderson Bridge Co. v. Kentucky, 166 U. S., 150.

This case is important as clearly drawing the distinction between the business done by persons engaged in commerce and who avail themselves of a given facility, and the occupation of a person, or aggregate body, *providing such facility*. The operations of the latter were held not to constitute interstate commerce, although the facility in question was a bridge across the Ohio river from Indiana to Kentucky. It was said that the charges of such bridge-owner affected commerce but remotely and incidentally, and that they did not so directly affect it as to infringe upon the Federal commercial power.

Henderson Bridge Co. v. Kentucky, 166 U. S., 150, 154.

The dissenting judges expressed the opinion that the effect of the decision was to "substantially overrule" the Covington Bridge case. While the distinction between the two cases is perhaps not fully elaborated, it is ventured, with due deference, that there is a clear one between a local law undertaking to regulate the tolls of a bridge erected under authority of *two* States and used by citizens of both alike, which is, in effect, an effort by one State to exercise jurisdiction *over property not wholly within such jurisdiction*, on the one hand, and, on the other hand, an exercise of the taxing power over the receipts from the use of a mere *aid or facility* to commerce, and affecting that

commerce only incidentally, though that commerce be interstate in its character.

These views were quite clearly recognized, even by the dissenting judges in the Henderson Bridge case; but they thought them inapplicable to the situation presented in that case. The present case, however, involves none of the difficulties which caused that division of opinion.

REVIEW OF COMPLAINANT'S CONTENTIONS.

The adjudged cases, in terms or in effect, dispose of the minor contentions of the complainant in this behalf.

a. The intention of the owner, in one State, to ship his live-stock to another State, is an immaterial consideration. The property does not become subject to the Federal power until the transportation thereof has *actually begun*, and remains so only while *that transportation is in progress.*

Coe v. Errol, 116 U. S., 517, 525, 528;
United States v. E. C. Knight Co., 156 U. S., 1, 13.

That transportation "ends after the stock is unloaded or delivered" *at the stock yards* to which it is consigned.

Covington Stock Yards Co. v. Keith, 139 U. S., 128, 136;
Myers v. Baltimore County, 83 Md., 385.

b. The purchaser of the live-stock, as such, is not engaged in interstate commerce, (Waring v. Mayor, 8 Wall., 110,) and that he intends, at the very time of his purchase, to transport the property to another State, and actually consummates his purpose, do not make the sale to him a transaction of interstate commerce.

Kidd v. Pearson, 128 U. S., 1, 21, 23, 24.

The subsequent sale, delivery or distribution of property which has once been the subject of commerce

between the States is an entirely new transaction, and does not, retrospectively, invest the previous sale witd any of the attributes of interstate commerce.

In re Greene, 52 Fed. Rep., 104, 112, 114;
United States v. E. C. Knight Co., 156 U. S., 1 13, 17.

c. In every instance, a sale is made in either Kansas or Missouri. The live-stock is not sold until after its arrival at the Stock Yards. Wherever the location of the property, and at whatever point or points the negotiations are carried on, *the contract of sale is completely entered into at some given point.* That place is the consummation of the contract and fixes its *lex loci*, as has been determined in the many recent insurance cases, of which Equitable Life Society v. Clements, 140 U. S., 226, 232, is the leading one. Every contract, in the very nature of things, is governed by the law of some one State. Such an anomaly as a contract subject to the laws of *no State*, but constituting, of itself, interstate commerce, has never been evolved, and cannot exist. (Liverpool Steam Co. v. Phenix Ins. Co., 129 U. S., 397, 447). It certainly does not result from the fact that the property under negotiation happens to be at the time in another State, for that would withdraw a large majority of the commercial contracts of the day from the operation of the State statutes, which is a decisive consideration, (155 U. S., at 655; 156 U. S., at 16). It cannot be material that the negotiating parties happen to reside in different States, nor that the sale is made in one State and payment, or even delivery, in another. (Hall v. Cordell, 142 U. S., 116, 120, concerning Chicago Live Stock Exchange). Such subsequent act does not transform the transaction into one of interstate commerce. At most, "it is but the performance of an act rendered necessary by the provisions of *the contract already made.*"

Allgeyer v. Louisiana, 165 U. S., 578, 588.

d. Nor can it be said that every one who u[illegible]s or

refuses to use, or agrees not to use, the telegraph, or soliciting agents, thereby makes all his transactions the subject of interstate commerce.

e. As these defendants are not engaged in interstate commerce, in any view which can be taken of the matter, under the authorities already cited, it is probably unnecessary to undertake to mark out whether there are any particular or isolated transactions on their part which could be brought within the jurisdiction of the Court, even if the complainant were successful on the merits. However general the language of the statute, it can only be enforced as to interstate commerce. (Osborne v. Florida, 164 U. S., 650, 654, 655.) Though an injunction should issue it would have to describe, accurately and specifically, what transactions constituted interstate commerce. Where is the line to be drawn?

1 Beach, Injunctions, § 115.

The "Original Package" Doctrine.

The complainant undertakes to answer this all-important question by invoking the doctrine of the so-called "Original Package" cases. Upon their authority, it is urged that if live-stock shipped from a state other than Kansas is unloaded in that part of the yards located in that State, or, if shipped from a State different from Missouri, is placed in pens situate in the latter state, such stock is an "original package," and, consequently, an article of interstate commerce until sold and actually delivered to the purchaser, and that everyone connected with such sale or delivery, in whatever capacity, is engaged in interstate commerce and that his refusal to serve or a demand for a given compensation is a restraint on such commerce. As already shown, the "original package" doctrine has no application to *a mere service* rendered or facility afforded by a commission merchant or other agent. And, as a train-load, or even

a car-load, of live-stock, may be, and often is, sold in parcels to a number of different purchasers, it might be interesting, if necessary to a conclusion, to inquire whether each individual animal is an "original package" or whether the entire shipment is to be so characterized. 81 Fed. Rep., 997, 1000.

Here, neither the owners who ship, nor the railroads which carry, are members of the Exchange or parties to its rules. An owner may employ a broker, or not, accordingly as his interests move him. A railroad is not bound to deliver only to an Exchange-member. Even should a broker refuse to serve a given shipper, peremptorily and without any reason whatever, he could not be said to be restraining interstate commerce. That he refused to serve except upon certain terms, even though his position be influenced by his membership in an Exchange, could not convict him of restraining commerce: it would simply be denying the refusing shipper the benefit of the skill of the broker and of the benefits and facilities provided by the rules of the Exchange. Every failure to agree on terms cannot be held to be proof conclusive that commerce has been restrained.

However, it is interesting to note whether it is true that live-stock shipped to the Kansas City Stock Yards from another State remains an article of interstate commerce after being unloaded and offered for sale. The transaction is not in pursuance of a previous contract. The property is brought to market for the purpose of being offered for sale generally to any person who will buy the whole or any part of the consignment. The isolated instances of shipments *en route* to Chicago or elsewhere which are unloaded solely to the end that the animals may be rested, watered and fed, or in order to "test" the local market, are irrelevant to the present controversy; for with these the defendants do not seek to have any concern, nor do any of the rules or practices relate thereto. Equally irrelevant is the fact the

Department of Agriculture maintains an inspection bureau at these yards, for its operations are confined to an inspection into the soundness of live stock from Texas and other infected districts, *before it is unloaded* or placed in pens ready for sale, to-wit: before the *transportation* thereof has ceased.

The material inquiry is as to live-stock consigned to the Stock Yards in question, which has either passed inspection or which is not subject thereto, and which has reached its destination, so far as its then owner is concerned, and been delivered to the consignee to be offered for sale as other merchandise which has been imported from another State or a foreign country.

When Property Becomes Local.

This precise question has been several times decided by this Court, and it is of striking importance that however numerous and persistent the dissents in other cases on the general subjects of interstate commerce and "original packages," these adjudications have in every instance been *unanimous*.

The leading case proceeded upon this state of facts: Coal, mined and taxed in *Pennsylvania*, was shipped by the owner, residing at Pittsburg, by river to *New Orleans*, consigned to his *selling agent at the latter city*, to be there sold by him *on the owner's account*. The State of Louisiana levied a tax upon the property itself, *immediately upon its arrival at New Orleans and while still on the boats which had carried it from Pittsburg*. The tax was resisted as a burden on interstate commerce and the property was claimed to be still in its "original package."

After declaring that the disposition which a subsequent purchaser of the coal might make of it, by way of an export or its transportation to another State, was wholly immaterial, and that the only question was as to the status of the property before its sale or any action

in reference thereto, (629), the Court disposed of this question in language precisely and literally applicable to the strikingly parallel case now at bar: The action of the State of Louisiana, it was ruled, "was not a tax imposed upon the coal as a foreign product or as the product of another State than Louisiana, nor a tax by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was *in a state of transit* through that State to some other place of destination. It was imposed *after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans.* It might continue in that condition for a year or two years or *only for a day. It had become a part of the general mass of property in the State.* * * * Take the City of New York, for example. When the assessor of taxes goes his round, must he omit from his list of taxables all goods which have come into the city from the factories of New England and New Jersey or from *the pastures and grain fields of the West?* * * * After their arrival within the State—*that being their place of destination for use or trade*—to tax them is not a regulation of interstate commerce."

Brown v. Houston, 114 U. S., 622, 632, 633.

It will be observed that Mr. Justice BRADLEY, who delivered the opinion in Brown v. Houston, was also the organ of the Court in Robbins v. Shelby Taxing District, 120 U. S., 489, so strenuously relied upon by the complainant. The opinion in the latter case, upon its face, draws the distinction we urge, with very great clearness. That case was placed upon the precise and specific ground that the tax upon the "drummer" in question was, in legal effect, a tax upon *the goods themselves*, while still in the hands of the owner *and beyond the jurisdiction of the State.* Brown v. Houston was referred to as distinctly deciding that "*as soon as the*

goods are in the State and become part of its general mass of property, they will become liable to be taxed," and it was then laid down that "*when goods are sent from one State to another for sale*, or, in consequence of a sale, *they become part of its general property, and amenable to its laws.*" (p. 497.) The difference lies in the effort "to tax the sale of such goods, or the offer to sell them, *before they are brought into the State.*" (497.)

In this stage of the authorities, Judge CALDWELL was called upon to determine the following case:

A manufacturer of stove ranges located at St. Louis shipped a carload of them to a point in Arkansas consigned to *himself.* They were removed from the cars and stored in a warehouse which had been rented for that purpose. One of the owner's agents employed to make sales was arrested for failing to pay a tax imposed by the Arkansas statute on such agents generally. Judge CALDWELL pointed out the distinctions established in the then recent cases decided by this Court:

"*The ranges were not sold before they were shipped. They were shipped into the State to be thereafter sold; and they were received by its agent, the plaintiff, and placed in the store-house for future sale.* It was from the ranges so stored in this State that the plaintiff made his sales and filled his orders. He was not a 'drummer' taking orders for ranges then out of the State, and to be thereafter shipped into the State. *He was selling the goods then in the State, as other merchants do.*"

Hynes v. Briggs, 41 Fed. Rep., 468, 470.

Shortly after this, Leisy v. Hardin, 135 U. S., 100, was decided, and it was at once claimed that, as a result of that opinion, Brown v. Houston stood overruled. This claim was negatived, and the distinction between them has been illustrated by several cases decided on the circuit.

Ex parte Brown, 48 Fed. Rep., 435, 438–444;
American Harrow Co. v. Shaffer, 68 Fed. Rep., 750, 756, 757;

Preston v. Finley, 72 Fed. Rep., 850, 860.

In a dissenting opinion delivered soon after Leisy v. Hardin had been determined, Mr. Justice BRADLEY, with the concurrence of Mr. Justice FIELD (both of whom were of the majority in Leisy v. Hardin) and of Mr. Justice HARLAN, (who had joined in the dissent in that case), reiterated that when property has been brought to a State "*for the purpose of ordinary use or sale*," it has acquired a local status.

Pullman's Car Co. v. Pennsylvania, 141 U. S., 18, 31.

In a very recent case, the supposed conflict between Leisy v. Hardin and such a case as the one at the bar was directly brought to the attention of the Court.

The owner of coal, residing at Pittsburg, shipped the same, in barges belonging to himself, to the State of Louisiana, for the purpose of being sold there or of being consigned thence to supply orders from other States. While the coal was moored at Baton Rouge, in the *original barges* in which it had been shipped from Pittsburg, it was subjected to a tax by the State of Louisiana. This tax was adjudged to be *valid* and not in violation of the interstate commerce clause of the Constitution. The barges had been consigned to the plaintiff's *selling agent at New Orleans*, and that agent, "not having yet made the necessary arrangements to receive or dispose of the cargoes of the vessels at New Orleans or elsewhere, the vessels, being about one hundred in number, were stationed and moored in the Mississippi river at a convenient mooring place about nine miles above the port of Baton Rouge, where they awaited the orders of the consignor's agent, to be thence navigated to such places as he might deem convenient or advantageous to the owner's interests."

Counsel for the petitioner undertook to distinguish Brown v. Houston on the ground that the coal in question had not yet reached its destination but was still in

transit. Their principal contention, however, was that Brown v. Houston had been overruled by subsequent decisions, "*particularly that in Leisy v. Hardin, 135 U. S., 100.*"

The opinion of this Court was *unanimous*. A series of previous cases were reviewed (587–8); *Brown v. Houston was fully stated and reaffirmed* (588–9); and the conclusion announced that "the property in this case, as in that, still belongs to the original owner in Pennsylvania, but is brought to Louisiana *for purposes of sale*, and is subject to taxation and sale as any other property of citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country." (589.)

Pittsburg Coal Co. v. Bates, 156 U. S., 577.

Concurrently with this, the Court upheld a statute of Louisiana prescribing a compulsory measurement of the contents of all coal *brought into the State for sale*, saying that while the system prescribed might have an effect upon commerce, yet such effect was only *incidental* and *remote* and did not constitute *a regulation of commerce*.

Pittsburg Coal Co. v. Louisiana, 156 U. S., 590, 599.

The same conclusions are announced in the exhaustive opinion of Mr. Justice GRAY in Emert v. Missouri, 156 U. S., 296.

It is sought to distinguish this case by the assertion that it rested upon an exercise of the police power by the State. It deserves to be noticed that the Court was precise to uphold both the local *taxing* and the police powers. (311.) Indeed, the full jurisdiction of the State, in every respect and for all purposes, was adjudged. (322.) It does not occur to us to be a decisive consideration that a given case is devoted to a discussion, in whole or in part, of the police power of the State. Doubtless, cases do arise when the fact that the police power is being exercised as against interstate

commerce becomes an important consideration. These are usually the cases in which it is said that it must be an exercise of the police power pure and simple, a regulation for the protection of the health, safety or morals of the people, and not merely an attempt to create an obstruction to interstate commerce, or where the inaction of Congress has left the States free to legislate relative to certain matters.

Certainly, when it is held that a given person *is not engaged in interstate commerce*, that ruling establishes *that proposition* for all purposes, whatever the other points in the case may be.

A striking illustration of this is disclosed by comparing the cases of Covington Bridge Co. v. Kentucky, 154 U. S., 204, and Henderson Bridge Co. v. Kentucky, 166 U. S., 150. The former involved an exercise of the *police power*, and was decided *adversely* to the State, while the latter involved the right of *taxation* and the State was *successful*. Yet it did not occur to a single justice, in either case, to point out any such distinction. If there were one, the Covington case ought to have been free from doubt, and there would have been no occasion for the minority to assert, in the Henderson case, that the former had been "substantially overruled." (166 U. S. at 169.)

We insist, therefore, that the arguments, illustrations and conclusions so exhaustively stated in Emert v. Missouri have full application to the status of these defendants, at least in respect of the question under consideration. There, the Singer Manufacturing Company, engaged in making sewing machines in New Jersey, employed Emert as its selling-agent in Missouri. The machines were shipped to him, and he was to sell them *for and on account of the company*. He offered them for sale in *the same condition as when received*, and while they were still the property of the New Jersey producer. His counsel insisted that he was selling "original packages" and that he was engaged in inter-

state commerce, precisely as if his principal had made the sales in New Jersey for delivery in Missouri, or had been present in person when the sale and delivery were consummated, (301–306). The Court said of these contentions: "There is nothing to show that he ever offered for sale any machine which he did not have with him at the time. His dealings were neither accompanied nor followed by any transfer of goods, or of any order for their transfer, from one State to another; and *were neither interstate commerce in themselves, nor were they in any way directly connected with such commerce.*" (311.)

The illustration of Mr. Chief Justice MARSHALL, that an auctioneer employed to sell an "original package" was not engaged in interstate commerce, was approvingly quoted, (313); Woodruff v. Parham was reaffirmed, (314); Welton v. Missouri, Cook v. Pennsylvania, and similar cases were shown to rest upon the ground of State *discrimination*, (315, 316); Brown v. Houston was fully stated and the language hereinbefore set out approvingly quoted, (317); Robbins v. Shelby Taxing District was shown to proceed upon the very distinction we have indicated, (318, 319), namely, that the goods were at the time of the State interference "*in another State*" and had not been "*brought within the jurisdiction of such State for the purpose of being sold.*" Leisy v. Hardin, Brennan v. Titusville, and similar cases, were reviewed; and that these were correctly distinguished is shown by the fact that the opinion was *unanimous*, and concurred in by the very Justices who wrote the opinions in those cases.

Emert v. Missouri, 156 U. S., 296.

MANNER OF CONDUCTING DEFENDANTS' OCCUPATION.

The allegations of the bill of complaint disclose a labored effort to bring the acts and purposes of the defendants and of the Exchange to which they belong,

within the domain of the congressional enactment. It is a decisive consideration that the defendants are not *dealers;* they neither buy live-stock, as purchasers, nor sell the same, as vendors; nor are they engaged in transporting the same. They are merely agents, selling, and, sometimes buying, for and on behalf of others, for a commission. (White v. Brownell, 2 Daly, 329, 337). They render personal services merely. Their commissions are earned when the services have been performed. A broker (though belonging to an Exchange) is simply an agent to transact business, not for himself, but for others. He is a middle-man, a negotiator between other persons for a compensation; and so this Court has directly decided in reference to this precise occupation (Union Stock Yards Bank v. Gillespie, 137 U. S., 411, 415, 419). That service is neither interstate in its character, nor does it constitute commerce in the sense in which that term is used in the Federal Constitution. And the Exchange, as such, is not engaged in business or commerce of any kind whatever, local or interstate. "The rules of the Exchange are merely machinery for bringing the two parties together." (Bowsing v. Shepherd, L. R., 6 Q. B., 309, 327).

A broker having his office in Missouri who sells cattle located in Kansas does not thereby engage in interstate commerce. The fact that pending negotiations for such sale, the cattle may, for the convenience of the Stock Yards Company, be moved from one State to another does not affect the situation.

Lehigh Valley Railroad v. Pennsylvania, 145 U. S., 192, 200 *et seq.;*

Seawell v. Kansas City etc. Ry. Co., 119 Mo., 222.

How can it be said that mere brokers, whose only connection with the property is to perform a mere act of agency in finding a purchaser, are "directly commerce itself," in contradistinction to being mere *aids* to

commerce, merely incidentally affecting it, and only indirectly related thereto?

Does the employee who feeds the cattle at the yards, or the weighmaster who weighs them, transact interstate commerce? Or the banker who pays the check or draft given in payment for the cattle raised and shipped from Kansas, but sold and delivered to the purchaser in Missouri?

These inquiries point the distinction between interstate commerce and matters of merely domestic concern,—a distinction which, as already indicated, "*has always been carefully preserved and is clearly defined by the authorities.*" The language of this Court also supplies a decisive answer to the inquiries above suggested: "If the power to regulate interstate commerce applies to all incidents to which such commerce might give rise, and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between States, and would exclude State control over many contracts purely domestic in their nature."

Hooper v. California, 155 U. S., 648, 655;
United States v. E. C. Knight Co., 156 U. S., 1, 16.

The Views of the Circuit Court.

The Circuit Court correctly stated the question to be, as applied to the pleadings and facts before it, "*Is the business in which the defendants are engaged, commerce between the States?*"

After holding the accidental location of the Stock Yards on both sides of a State line to be wholly immaterial, it answered the question above propounded, in the affirmative upon these grounds:

a. Live stock shipments are solicited by traveling employees from owners resident in other States. Fre-

quently loans are made to such owners secured by chattel mortgage. A consignment having been made, the consignor often draws on the consignee with bill of lading attached, and the proceeds are in various ways disposed of as directed by the owner. The broker is also on the alert for purchasers and sells without regard to the ultimate destination of the consignment, it being at times re-shipped to other markets, but principally used in the neighboring packing houses.

A number of approved definitions of the term interstate commerce were quoted, from which it was concluded that *State legislation* in reference to local brokers employed to sell such live-stock, limiting the number of solicitors, regulating telegraphic communication, and providing for discriminations in rates of commissions, would be invalid as prohibited regulations of interstate commerce,—a conclusion at not all warranted by the cases cited, nor involving by any means an accurate test, and based on an assumed state of facts far different from those shown by the Record. If such regulations by means of State legislation, were unconstitutional, this would be because, as to a private occupation, the statute would be in violation of *the Fourteenth Amendment;* and for the same reason, Federal legislation to the same end, by Congress or by means of an injunction, is violative of *the Fifth Amendment.*

Certainly the Munn and Budd cases cited by the Court, support no such conclusions as it announced under this head, but *do* uphold legislation of this very character as not infringing upon the Federal commercial power. The only fair test is, would an agreement between partners or a by-law of a business corporation that no solicitors, or only a given number of them, should be employed; that *prepaid* telegrams should not be sent soliciting business; and that fees or commissions would be shared with others engaged in the same business elsewhere who should invoke the services of the local party, be an invasion of the commercial power of

Congress? There is a marked distinction in this respect between State legislation and a *private contract.*

Railroad Co. v. Richmond, 19 Wall., 584, 589.

It was glaringly inaccurate to say that the rules provided for "a *discrimination in rates* (of commission) for handling stock shipped from different localities outside of the State." The provision on the subject is section 8 of Rule IX., (Record, 43, 44), which refers solely to dealings with *commission merchants located at other cities*, and regulates the very common practice which prevails between persons exercising occupations —(probably more so among lawyers than in any other instance)—of dividing fees or commissions flowing from business forwarded by one to the other. Such division is permitted when live-stock is shipped direct to non-resident commission merchants from one of the markets named. A note to this rule shows that it has thus been officially construed. For palpable reasons, this is by no means the same as State legislation *intentionally discriminating* against the products of another State. (Merchants' Bank v. Pennsylvania, 167 U. S., 461). In view of the court's conclusion, it is remarkable that the bill in this case does not even question the rule's validity, nor the injunction specifically prohibit its continued enforcement.

It would be somewhat startling if a lawyer at New York, for good business reasons, should send a case to a professional brother in Kansas for attention, that an agreement to divide fees could not be lawfully entered into. And equally so to say that because the Kansas lawyer kept *all the fees* collected from his ordinary clients, but *divided fees* with counsel sending business from another State, *he thereby discriminated against his neighbors, and violated the Act of Congress.*

b. After holding that under the Trans-Missouri case, contracts concerning aids to commerce, consisting of mere personal services, were within the Act of Congress, the status of the defendants was distinguished

from local incidents to commerce upon these grounds: "They are *active promoters*, and frequently interested parties in this immense traffic. They reach out over many States and Territories, by their solicitors and advertisements and gather in for sale and slaughter millions of cattle, sheep and hogs, and their rules and regulations cover the entire business and extend over the whole field of operation."

This statement was followed by a indiscriminate citation of most of the cases relied on by the defendants, running from Packet Co. v. St. Louis, 100 U. S., 423, to Henderson Bridge Co., 166 U. S., 150, as being "in point."

1. The Trans-Missouri case does *not* hold that contracts concerning "only an aid or incident to commerce, something in the nature of personal services," to quote the circuit court, fall within the Act of Congress; on the contrary, it indicates *the very reverse* as plainly as the English language can do so. A local commission merchant is far different from an interstate railroad whose transactions are "commerce itself," *ipso facto.*

2. The defendants are beyond all doubt "*active promoters*," and while this is proof conclusive that they do not *restrain* commerce, it has no bearing to negative their status as mere incidents to commerce. The *indolence* or *activity* of a person in exercising his vocation does not affect the question whether he is engaged in interstate commerce. Doubtless, many exceedingly inactive persons are so engaged. Whether the extent of the business be great or small is, in this respect, equally irrelevant.

3. The "frequent interest" mentioned refers to the fact noted that many loans are made by commission merchants to owners of live stock, secured by chattel mortgage and repaid out of the proceeds of sale. This element of interest was present in Woodruff v. Parham, 8 Wall., 123, and in many of the cases following it. The circumstance is wholly irrelevant: that a party

holds a chattel mortgage on property in another State has no tendency to stamp him or the mortgagor as being engaged in interstate commerce. Would a State statute on the subject of such mortgages—regulating the matter of acknowledging or recording them, or prohibiting certain clauses therein, forbidding the employment of solicitors or the sending of prepaid telegrams to induce persons to make them,—be a violation of the Federal Constitution?

4. That the defendants request employment by means of solicitors or advertisements sent to other States is equally without point. The statement means that those commission merchants who employ no solicitors and who do not advertise, are *local*, while a mere resort to such means for attracting custom would place them *beyond State control*, free from local license fees, and subject to Federal regulation. If every person who advertises in or sends solicitors or prepaid telegrams to other States, thereby engages in interstate commerce, few business vocations can be regulated as local agencies.

Many startling assertions have been made on the subject of interstate commerce since the question first came before the courts; but if any of them have been more irrelevant than the conclusions below on this phase of the question, no trace of it is to be found in the books.

c. The statement that several of the rules involved "have more than a local operation and extend beyond State lines" again refers to the provisions concerning solicitors and prepaid telegrams, which have been already considered.

d. It is asked, "Does this live stock, once upon the stream of commerce, cease to be such when unloaded at Kansas City?"

Brown v. Houston was distinguished because it was said that there the property had reached it destination and was offered for sale in great or small quantities,

to suit the purchaser. There is in point of fact no such difference between the facts of that case and of this. Here, too, the only live-stock with which the defendants and their rules are concerned, is that which is *actually sold at Kansas City*. That which is unloaded merely to be watered or fed *en route*, or not sold there because the prevailing prices are unsatisfactory, is not subject to a commission charge, non-trading rule, or any of the other regulations of the Exchange.

So, too, live-stock may be sold at Kansas City "in great or small quantities to suit the purchaser," and the very object of offering it is that some member of the public generally shall become the purchaser, in whole or in part. Whether to sell the first day, or to hold until better prices prevail or some temporary depression passes away, are business problems, and the probability that the parties will decide them this way or that does not bear upon the question whether they are engaged in interstate commerce. The coal involved in the Louisiana cases might have been sold in barge-load lots, for local use or for reshipment, immediately or when prices became satisfactory.

The decisive element which applies to all live-stock to which the defendants' rules have the slightest bearing, is that such live-stock has reached its *destination*, its transportation has *ceased*; it has been unloaded *for purposes of sale*. That now and then isolated shipments are not sold but shipped to another market may bear upon the status of *that shipment*, if it can be said that an undisclosed conditional intention is a decisive consideration, but does not impress upon *all* live stock received at Kansas City the same interstate commercial characteristicts.

e. The provisions of sections 4386–7 of the Federal Revised Statutes requiring railroad companies to unload live stock from time to time in the course of transportation, in order that it may be fed, watered, and rested, are equally foreign to the case.

f. The Government inspection of certain live stock, *before it is permitted to be unloaded and offered for sale*, does not prove so grave a violation of the Constitution as would be shown by the assumption that live stock not subject to inspection, or which has been inspected, remains under Federal control *after being unloaded and offered in the market to purchasers generally in such quantities and at such prices as may be mutually agreed on*, and especially not, that every person *who renders services in and about negotiating a sale*, and in feeding, watering, or weighing such live stock while at the yards, is thereby made to engage in interstate "commerce *itself*," or that his charges for services thus rendered, or even refusals to serve unless thus compensated, constitute restraints of commerce among the States.

THE TERMS OF THE INJUNCTION ORDER.

The injunction order goes even further than the opinion on this subject. It embodies these definitions of interstate commerce: All services or transactions concerning live stock received at the Kansas City stock yards "from other States and Territories *for sale there* or for further transportation to other States or to foreign markets. * * * Live stock shipped from one State or Territory *for sale or disposition* in another State or Territory." (Record, 277, 278.)

That services in negotiating a sale were necessarily local, and that their effect on interstate commerce was, at most, incidental, was denied. Property was adjudged to be still a portion of commerce among the States after its arrival at the stock yards "*for sale there.*" If the added clause meant to attribute a similar status to live stock *intended to be further transported after having been thus sold*, it is in direct conflict with Coe *v.* Errol, Kidd *v.* Pearson, and United States *v.* Knight Co., *supra.* If that clause had reference to live stock which was merely unloaded *en route*, for the purpose of being watered, fed, and rested, it was wholly irrelevant,

for, to repeat, as to such stock the rules and operations of the exchanges are wholly without application: there is no charge of a commission and no dealing or refusal to deal as to such stock.

If, however, it should be concluded that, now and then, a transaction is disclosed by the record in respect of which the defending exchange falls within

the jurisdiction of Congress that transaction gives rise to the proposition that:

II.

THE ACT OF CONGRESS WAS NOT INTENDED TO TRANSFORM THE MANY EXCHANGES EXISTING IN THE UNITED STATES INTO UNLAWFUL COMBINATIONS AND THEIR MEMBERS INTO CRIMINAL OFFENDERS.

In February, 1790, on the day fixed by the Judiciary Act of 1789, the Supreme Court of the United States opened its first term in the ROYAL EXCHANGE in the City of New York. (Carson, Hist. Supreme Court, 150). At the Centennial Celebration of this memorable event, held in February, 1890, this fact was repeatedly referred to, (Carson, 581, 594), and it was embodied in the account of the proceedings which was appended to 134 U. S., at 711.

The basis of the present proceeding is that Congress, in that Centennial year, enacted that such bodies as the one under whose auspices this august tribunal held its first session should thenceforth be outlawed as combinations to restrain the trade of this land and as monopolies fraught with injury to the public interests. The contention is that the Exchange thus honored and recognized (by the strongest implication), and its successors and followers, have become unlawful conspiracies and its members amenable to criminal prosecution.

The precedent of favorable recognition on the part of this Court is supported by its judicial utterances:

In Bibb v. Allen, 149 U. S., 481, (May, 1893), "the statutes of New York under which the New York Cotton Exchange was organized, together with *the rules and regulations of that body*" formed a part of the record. A review thereof at a subsequent page of this brief will disclose the presence of provisions in that contract rendering the organization subject to the con-

tentions of the Government in the present case, and among the items there sued for was one for $750 in *commissions*, as fixed by the rules. The opinion of this Court was delivered by Mr. Justice JACKSON. In view of his then recent critical examination of the Act of July 2, 1890, in the Greene case, 52 Fed. Rep., 104, (August, 1892), it is impossible to escape the conviction that if that Act had been supposed to have the slightest application to Exchanges some notice would have been taken of the circumstance. Yet, it was adjudged "that THIS COTTON EXCHANGE WAS A LAWFUL BODY, ORGANIZED FOR LAWFUL BUSINESS PURPOSES, and had power to make such rules and regulations as might be deemed necessary and proper to carry out the purpose of its organization" (489).

In Hansen v. Boyd, 161 U. S., 397, (1896), the rules of the Chicago Board of Trade (hereinafter summarized) were read in evidence (403), the suit being, in part, to recover the commissions prescribed by those rules. Bibb v. Allen was approvingly cited and a charge by the trial court that "there is nothing in *these rules, on their face, that indicates that they are* * * * *contrary to public policy*" was neither excepted to nor criticised by this Court (406).

The important case of Texas & Pacific Railway v. Interstate Commerce Commission, 162 U. S., 197,(1896), had its origin in complaints made by a number of these organizations, (200),including the Commercial Exchange of Philadelphia, referred to in detail, *post*. By the strongest implications, the lawfulness of such associations, was conceded by Mr. Justice SHIRAS, speaking for the Court (215), and their right to be heard, (*in equity* at that), in matters so vitally affecting the commerce of the country, was warmly affirmed by Mr. Justice HARLAN, dissenting (241, 252).

It may, therefore, be fairly said that, in substance, the contention of the complainant is that such rooms as the one in which this Court held its first session have

become the theatres of criminal operations, *per se*, and that the several associations reviewed and so favorably characterized, in at least three well-considered cases decided since 1890, ought, instead, to have been stamped as unlawful combinations, conclusive proof of which was published to the world in their rules and regulations, embodied in full in two of the records reviewed by this Court. It follows that the Court is in effect, asked to overrule its own recognition and adjudications concerning these bodies in the past. Our position is,—in full harmony with the necessary result of the cases referred to,—that the welfare of the public and the interests of commerce demand that the logical consequence of what this Court has said on this subject in the past shall be formulated by way of a direct adjudication in commendation of the regular or typical American Commercial Exchanges and Boards of Trade; and for these reasons:

From the earliest days of the Republic, it has been recognized that commerce, a department in which it is the chiefest ambition of our people to attain pre-eminence, can only be successfully carried on by the aid of proper facilities and the service of particular agencies, animate or inanimate. The distinction between obstructions, impediments, hindrances and restraints, on the one hand, and aids, benefits and advantages to commerce, on the other, has been many times recognized. It has been pointed out that certain matters constitute an "increased facility" (Passenger Cases, 7 How., at 403), which may consist of "services rendered," (State Freight Tax Case, 15 Wall., at 278). "A charge for services rendered or for conveniences provided is in no sense a hindrance or impediment to free commerce;" but these are "facilities to commerce rather than hindrances to its freedom," and charges therefor are not "*restraints* of commerce," whether imposed by "a State, a municipal corporation, or a private individual."

Packet Co. v. Keokuk, 95 U. S., 80, 84, 85, 87, 88;

Huse v. Glover, 119 U. S., 543, 550.

"It is a doctrine too well settled, *a practice too common and too essential to the interests of commerce* to admit of a doubt, that for the use of structures, erected by *individual* enterprise, or recognized everywhere as private property, a reasonable compensation can be exacted."

Cannon v. New Orleans, 20 Wall., 577, 582;
Atlee v. Packet Co., 21 Wall., 389, 393.

Again, such services "materially *advance*, and do not obstruct or burden, trade;" they are "in *aid*, and not a hindrance, of commerce," and are rendered "for the *benefit* of those engaged in commerce," and "for the *convenience* of trade and commerce."

Packet Co. v. St. Louis, 100 U. S., 423, 427, 429;
Vicksburg v. Tobin, 100 U. S., 430, 432;
Head Money Cases, 112 U. S., 580, 596;
Sands v. Manistee River Imp. Co., 123 U. S., 288, 293.

That Exchanges are to be thus classed is disclosed by the definitions which are given by standard lexicographers:

BOARD OF TRADE—"An association of business men, established in most large cities, for *the furtherance of commercial interests*, the enactment of *rules for the regulation of trade*, and the consideration of legislation affecting banking, insurance, railroads, customs, etc.; a chamber of commerce." (Century Dictionary).

Also, 26 Am. & Eng. Ency. Law, 227.

CHAMBER OF COMMERCE—"A voluntary association of the merchants and traders of a city or town for the protection of their commercial interests." (Century Dictionary);

"A board *to protect the interests of commerce*, chosen from among the merchants and traders of a city." (Imperial Dictionary).

As will be shown, "there is not a city or large town in the United States" where such organizations do not

exist; and "the long acquiescence" in the universally accepted conclusion that "Exchanges have become *of incontestable value to the public*," (Dos Passos, Stock Exchanges, Preface, IV.; Biddle, Stock Brokers, p. 40,) and the fact that they have "attained a position *not inferior in influence and importance to any of the distinctive adjuncts of this commercial age*," (Bisbee & Simonds, Produce Exchanges, Preface VI.,) demonstrate their "absolute necessity" and presents an "argument almost conclusive in favor of their rightful existence."

Packet Co. v. Catlettsburg, 105 U. S., 559, 563.

RULES FOR CONSTRUING THE ACT OF CONGRESS.

In determining the proper construction of the statute courts take judical notice of the history of such bodies, their manner of doing business, the results of historical investigations, and data and information disclosed by standard statistical compilations.

Suth. Stat. Const., Sections 300, 301, 306;
Moore v. American Transp. Co., 24 How., 1, 38;
Pacific Express Co. v. Seibert, 44 Fed. Rep., 310, 318.

If this investigation discloses an antecedent policy favorable to the enterprise in question, a departure from that policy will not be presumed.

Suth. Stat. Const., Section 321;
U. S. v. Fisher, 2 Cranch, 358, 390;
State v. Finch, 37 Minn., 433, 435;
State v. Reid, 125 Mo., 43, 57.

These views were applied in considering the legality of the rules of the New Orleans Cotton Exchange on the very subject of commissions.

Conners v. Robertson, 37 La. An., 814, 820.

It is to be noted that this Act does not undertake to *regulate* Exchanges, but, if it means what the complainant claims, Congress intended thereby to *destroy* them. In that view, and even when dealing with a case

of a Chinese merchant under an Act of Congress *specifically designed to limit the immigration of that race*, it was said: "We cannot believe that Congress intended to forbid to Chinese merchants, not only their own customs, *but the customs of merchants wherever trading is practiced.* * * We are asked to attribute to Congress *an intention to change the business methods of many people*, and to compel them to adopt inconvenient, and maybe impracticable ones."

Lee Kan v. United States, 62 Fed. Rep., 914, 918, (C. C. A.)

In such a case the courts are careful to remember that "a mere adherence to the letter, without reference to the spirit and purpose, may in this case mislead, as it has misled in other cases," (Packet Co. v. Keokuk, 95 U. S., 80, 87), and, accordingly, hold that, however broad the language of a statute, it will not be applied to matters "which *the whole history and life of the country affirm could not have been intentionally legislated against.*"

Holy Trinity Church v. United States, 147 U. S., 457, 472.

"Commerce, in its largest sense, must be taken to be one of the most important subjects of legislation, and an intention to *promote and facilitate it*, and not to *hamper and destroy it*, is naturally to be attributed to Congress."

Texas & Pac. Ry. v. Interstate Com. Commission, 162 U. S., 197, 218, 219.

For nearly seven years after the passage of the Act no step was taken to enforce it against Exchanges. Many suits have been brought and prosecutions instituted from which the general understanding of the Act can be readily gathered. Hundreds of Exchanges have existed and transacted large volumes of business, day after day, during all that period. Their places of business are conspicuous and usually in the very heart of the lo-

cus of the trade to which they respectively relate. The quotations of their transactions constitute a large part of every newspaper in the land. In view of these and other cognate considerations, the contemporaneous exposition of the statute and the long acquiescence in the legality of the existence of these bodies, are entitled to great force. This is especially true because since the Act was passed many new Exchanges have been organized; numerous memberships have been acquired, oftentimes at much expense; and large sums invested in improvements.

Endlich Int. Stat., Secs. 357, 358, at p. 503;
Hahn v. United States, 107 U. S., 402, 406.

THE ACT OF CONGRESS WAS NOT INTENDED TO DESTROY EXCHANGES.

In the light of the established rules governing the subject it must be concluded that there is nothing in this Act of Congress to warrant the construction that it was intended thereby to transform the many Commercial Exchanges throughout the land into criminal conspiracies. Such Exchanges have existed for centuries in all commercial centers. They have been created into corporations by special charters. General laws have been passed specifically providing for their incorporation, in most of which the *promotion* of trade was recited as the end in view. For illustrations, see

1 Thompson Corp., Sec. 146.

So section 1156 of the General Statutes of Kansas of 1889, (Vol. 1, p. 368), provides that "the purposes for which private corporations may be formed are: * * * Thirty-seventh. The organization and maintenance of Boards of Trades and Business Exchanges." By section 2771 of the Revised Statutes of Missouri of 1889, corporations may be formed "to erect Exchange buildings," and by section 2806 such corporations, in cities

having more than 35,000 inhabitants, are vested with the power of *eminent domain!*

Many, including the greatest of them, such as the London and New York Stock Exchanges, exist as unincorporated associations, resting upon voluntary contracts between their members. At the time of the passage of the Act of Congress there were one or more such Exchanges in every city in the Union which was known or recognized as a trade center with reference to a given commodity, whether grain, cotton, sugar, stocks, oil, mining products, lumber, or live-stock, (Century Dict. Tit. Exchange). Similar organizations also existed in reference to manufactures, the arts, and various professions and branches of labor, skilled and unskilled. It will be shown that whether incorporated or voluntary, such an Exchange as this had not only received the commendation of the Courts and economic authorities and been accorded favorable recognition by every department of government, but that no one had ever hinted that they were of an illegal character or inimical to considerations of public policy.

It is now urged, for the first time, that such organizations are conspiracies; that membership in them is a crime; and that their property is subject to forfeiture. Controversies without number affecting the status of such organizations have been before the courts. Members subjected to discipline, by way of fine, suspension, or expulsion, and strangers who were affected by some of the rules of a given Exchange, have many times brought these bodies before the courts. Every attack which the ingenuity of eminent counsel could devise, or the animosity of angry minds. could suggest, has been vigorously pressed. If any one has ever claimed what is contended for here, no trace of it has gone into the books; certainly no judicial sanction has been given it. "The silence of the books is very significant" and "is strong evidence." (FRY, L. J., in 23 Q. B. D., at

627, 630; Venable v. Wabash Ry. Co., 112 Mo., at 125).

Even in the exceedingly bitter litigation between Greer, Mills & Co. and this Exchange, of which this proceeding is the outgrowth (for the present bill is verified by a representative of that firm), and as recently as November 6, 1896, Judge PHILIPS noted that the very learned counsel then representing the complainant did not contend "that the limitations in the articles of agreement and by-laws fixing a *minimum commission* at which any member shall sell live-stock shipped to this market, and prohibiting its members from conducting such business 'on the outside,' are in *restraint of trade*, or tend to create a *monopoly*." (Greer v. Stoller, 77 Fed. Rep., 1, 7).

It is proposed to show that provisions fixing minimum commissions, regulating conditions of membership, limiting the privileges of membership to members in good standing, prohibiting dealings with non-members, and, generally, the other matters mentioned in the present bill, have been conspicuous features of *every trading Exchange in the world*. They are precisely the matters one would naturally expect to be covered by the rules of such a body. The differences are in the main merely verbal, or because the course of business regulated thereby has, in certain respects, distinguishing features. The aggregate value of the membership in these various bodies runs into the millions. In many instances, they own valuable property, consisting of Exchange buildings and the like. They are among the best known institutions in their respective localities. Some of them have a world-wide reputation and their existence is familiar knowledge to the most illiterate. Their transactions run into countless millions every year.

It is a fact, also, that these Exchanges all bear the same characteristics which are here denounced as evidencing a purpose to restrain trade and to monopolize

a given branch of trade. Indeed, the provision *limiting the privileges of the Exchange to members* and making membership optional with the body, is the leading one in all such organizations.

The rule on this subject, it has been judicially determined, is "not only reasonable, but *essential to the preservation of the Exchange* and the protection of its members; for it would be *destructive of such institutions* if persons who never were members, or who, having been members, had ceased to be such, were permitted, *under any pretense*, to utilize its premises or to enjoy its facilities."

McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 15 N. Y. Supp., 206, 207.

It is *that provision which must be held to be illegal.* All else is mere detail. For if a body can be formed from which all but members may be excluded at will, it must necessarily follow that it can *regulate the business conduct of its members*, and in doing so, prescribe minimum charges for services, prohibit dealings with non-members, and do all other lawful acts which will further the interests of the associates and thereby injure their competitors, for "the effort of all competition is to drive out all other competitors." (70 Fed. Rep., at 388.)

The various rules and regulations have at all times been publicly known. Those of many of the bodies had been published in full, not only in pamphlet form, but in legal treaties, economic discussions, and judicial reports, for many years prior to the passage of the Act of Congress in question.

Applying established rules of construction, can it be fairly argued that Congress intended to declare hundreds of bodies to be unlawful combinations, when no court of recognized authority had ever denounced them as such, and when, by the common voice and consensus of intelligent thought, they had been regarded in every age and in every land as most valuable *aids* to commerce?

Or that it intended to transform thousands of the best citizens of this Republic,—best in private character and best in their efforts to increase the commerce of our country and thereby its wealth and its importance among the nations of the world,—into common criminals, subject to imprisonment for continuing the transaction of their lawful business in the manner sanctioned by the experience and approval of centuries.?

Or, that organizations which the several States authorize to exist as corporations were to be stamped as criminal conspiracies in the Federal jurisdiction?

Or, that memberships, and the privileges incident thereto, representing investments and an actual value aggregating many millions, should not only be rendered valueless, but that ownership thereof should be conclusive proof of criminality?

Or, that the magnificent structures belonging to these bodies, and which adorn so many of our cities, should be no longer utilized for the purpose for which they were erected?

"Associations are so common an element, not only in commerce, but in all the affairs of life, that it would be rather perilous on the part of the court to assert that they impair competition, destroy emulation, and diminish exertion. There is scarcely an occupation of life, scarcely a branch of trade, from the largest to the smallest, that does not feel the existing and invigorating influence of these wonderful instrumentalities."

Jones v. Clifford, 5 Fla., 510, 515.

The bill in the present instance discloses, in its allegations designed to make out a case of interstate commerce, and to establish that the Kansas City Stock Yards constitute a public market, that "*vast numbers* of cattle, hogs and other live-stock are received annually at said stock yards," and that the same, "next to Chicago, is *the largest live-stock market in the world.*" In view of the subsequent allegations that all commission merchants at Kansas City are members of the de-

fending Exchange, and that some one of them is employed to negotiate every sale at that market, the complainant, out of its own mouth, has conclusively established that this so-called "conspiracy in *restraint* of trade" has succeeded, in a measure heaping-full, in accomplishing what its members claimed would result from its establishment: *the promotion of trade.*

Again, it is alleged that among other practices indulged by these alleged conspirators to restrain trade, is one "to *advance large sums of money* to stock-growers and owners of cattle, so that the owners of said live stock may have *the means to feed and prepare it for market.*" It is to be regretted that the bill does not disclose wherein this practice is calculated to *restrain* trade. There ought to have been a disclosure on this point, especially as the allegation is followed by others to the effect "that *ninety per cent.* of the members of said Live Stock Exchange *make such advancements* of money on live stock, and the *large* and *growing* market for live stock at Kansas City is *largely sustained by means of the money so advanced* to cattle-raisers by the defendants herein and their associates"! As "by their fruits ye shall know them," it stands alleged that this "conspiracy" has been and continues to be a *great public benefactor* and the most potent agency for *developing* trade of which the annals of commerce disclose a trace; for the body is but *ten years old!*

Exchanges Officially Recognized.

In and prior to 1890, the existence of these bodies was not only well known to the commercial world, to the courts, and to the various State legislatures, but they had been many times brought to the notice of Congress and the various executive departments. The indices to the Congressional Records, covering the period since 1865, disclose many petitions or memorials in favor of and remonstrances from them against

certain proposed legislation, including Live Stock Exchanges. The reports of Committees indicate that these bodies have constantly been consulted and their officers examined as witnesses. Special Committees, for instance, the one appointed on motion of Senator Vest to examine the alleged combination of packers to control the prices of meat products,and the one appointed under a resolution introduced by Senator Peffer to investigate the causes for the decline in the price of wheat, have not only had meetings in Exchange Buildings,but have examined into their workings and operations. The debates on various measures, especially the numerous ones concerning the so-called Anti-Option bill, proceeded, in a large measure, along the lines of familiarity with the extent of the dealings carried on under the rules of various Boards of Trade.

Of these publications and others referred to, *post*, judicial notice will be taken.

Jones v. United States, 137 U. S., 202, 214–216;
Heath v. Wallace, 138 U. S., 573, 584.

The Interstate Commerce Commission was instituted in March,1887. Exchanges have many times appeared before that body as complainants against railroad companies and were so reported to Congress, and the commission has held many of its meetings in Board of Trade buildings.

Thus, in the First Annual Report of that Commission (1887) the following Exchanges are mentioned: Atlanta Chamber of Commerce, p. 46; Clarksville Tobacco Board of Trade, p. 54 (as to which see 91 Tenn., 64); Memphis Cotton Exchange, p. 55; Boston Chamber of Commerce, pp. 102, 103; New Orleans Cotton Exchange, p. 110; and several others, pp. 54, 55, 58.

In its Second Annual Report (1888), the following are noted: Boston Chamber of Commerce, p. 108; Detroit Board of Trade, twice, pp. 127, 149; New Orleans Cotton Exchange, p. 129; Milwaukee Chamber of Commerce, twice, p. 153; Philadelphia Commercial Ex-

change, four times, p. 154; New York Produce Exchange, p. 156; and Chicago Board of Trade, twice, p. 162.

The Third Annual Report (1889), disclosed these appearances as complainants: New York Produce Exchange, twice, pp. 132, 146; Milwaukee Chamber of Commerce, three times, pp. 143, 144; Philadelphia Commercial Exchange, four times, pp. 143, 145; Chicago Board of Trade, three times, pp. 155, 166; New Orleans Cotton Exchange, three times, pp. 169, 171, 179; Toledo Produce Exchange, p. 174; and Detroit Board of Trade, p. 174.

These three reports had been *transmitted to Congress* and printed before the passage of the Act of July 2, 1890, and as related to the kindred subject of interstate commerce, they were presumptively consulted in the preparation and enactment of the statute referred to.

So, too, the Chief of the Bureau of Statistics of the Treasury Department had, in June, 1889, published a long list, embodying date of organization, number of members, names of officers, and manner of publishing reports of the respective Exchanges named. This list was published as an official document of the Treasury Department as "Statement No. 47 of Quarterly Report No. 3, Series 1888–89," and transmitted to Congress as a portion of the report on Internal Commerce accompanying the report of the Secretary of the Treasury for 1889, and printed accordingly.

In this report the data mentioned are given in connection with practically every Exchange which had been organized prior to 1887. As Live Stock Exchanges were first formed in this last mentioned year, and had not become prominently known when the report was made, there is no reference to them. But the various Stock, Produce, Grain, Cotton, and similar Exchanges, which are in all essential particulars identical with organizations devoted to Live Stock interests, are all included, and a statement made showing the annual

reports were in the hands of the Bureau. These annual reports, in practically every instance, include the rules and tariff of commissions governing the members of the body in question.

This tabulation also reached Congress and was in published form prior to the passage of the Anti-Trust Act of 1890,and so nearly prior thereto that, under the analogy of the rule governing the matter of notice in case of agency, (Distilled Spirits, 11 Wall., 356, 366), Congress must be taken to have been entirely familiar with this subject while it was legislating on the subject of commerce.

That the Act of July 2, 1890, was not intended to have the effect to transform such organizations from bodies recognized and treated as lawful into criminal conspiracies is plainly apparent from the subsequent reports made to Congress by the Interstate Commerce Commission.

In the Annual Report of 1890, the New Orleans Cotton Exchange and the Chicago Board of Trade are stated as having appeared as complainants, (pp. 88, 100.) The Commission changed its plan of reporting causes disposed of, after 1890, so that the Annual Report of 1895 discloses the complainants who appeared in the intervening period, as follows: Boston Chamber of Commerce, p. 133; Detroit Board of Trade, p. 146; New Orleans Cotton Exchange, three times, pp. 147, 161, 181; Milwaukee Chamber of Commerce, p. 149; Toledo Produce Exchange, twice, pp. 150, 189; New York Produce Exchange, p. 154; Chicago Board of Trade, p. 169; Philadelphia Commercial Exchange, p. 178; San Francisco Produce Exchange, p. 178; Boston Fruit and Produce Exchange, twice, pp. 180, 184; and Cincinnati Chamber of Commerce, p. 206.

In the 1896 Report the following are disclosed as having appeared before the Commission: Detroit Board of Trade (154); Chicago Board of Trade (177);

Memphis Chamber of Commerce (205); and Duluth Chamber of Commerce (205).

In a reported case, the right of such a body to appear as a complainant was drawn in question and affirmatively adjudged to have been conferred by Section 13 of the Interstate Commerce Act, the Commission saying:

"Such associations *exist in nearly all the principal commercial centers of the country.* It is *a matter of common knowledge* that they have for their object the bringing about of such results as will *improve the commerce of their respective localities.* The individual interests of the members, to a certain extent, are merged in that of all the other members, and this fact gives such associations *a standing* before the Commission which enables them to be heard upon the subject of alleged unreasonableness of rates or other conduct on the part of the carriers which is contrary to the provisions of the Act. Certainly such associations are *deeply interested* in all questions affecting the transportation of commodities."

Boston Fruit and Produce Exchange v. New York etc. R. Co., 4 Int. C. C. Rep., 661, 680, (VEAZEY, Com.);

Boston Chamber of Commerce v. Lake Shore R. Co., 1 Int. C. C. Rep., 436, 438;

New Orleans Cotton Exchange vs. Cincinnati etc. R. Co., 2 C. C. Rep., 375, 377, 382.

So that in 1887 Congress had recognized Exchanges as *lawful organizations* and entitled them to be heard before the then newly created Commission; and although the latter had characterized them as eminently interested in the *improvement* of commerce, and published its declaration to the world, there is no trace in the Congressional Record of any criticism upon or dissent from this conclusion; certainly no contention that in 1890 Congress had denounced these numerous bodies

to be thenceforth illegal and their members each guilty of a crime.

In September, 1894, the Interstate Commerce Commission issued a detailed list of the various commercial organizations in the United States, stated to have "been prepared for the use of Government and the public," and to be an official document. In this pamphlet the various Exchanges devoted to agricultural and commercial products, *including the defending Exchange*, and others of the same character, their location, and the names of their respective officers, are set out in detail. (See pp. 6-11; 13-15; 18-21; 23-25; 27; 28; 30-35.)

In the September, 1897, number of the magazine entitled "Municipal Affairs," under the heading "Business Men in Civic Service," (p. 491), an interesting account is given of the origin and constitution of the Merchant's Municipal Committee of Boston. It appears that in that law-abiding community, the Mayor, having noted that the various Exchanges had "taken a keen interest and have done very effective work in national and state affairs as well as in ordinary commercial enterprises," and appreciating that "the most pressing problems before the City of Boston relate to its *further development as an industrial center*, questions of foreign commerce, domestic trade and local manufactures," (p. 492), enlisted the active co-operation of these bodies in administering the government of the municipality. He asked six of the Exchanges to select an advisory committee of seven members, and his "invitation met with a hearty response from the business men of the city." (p. 493). The experiment has proved highly successful and the measure bids fair to become a permanent factor in municipal government; unless, of course, it should happen that the time and attention of the members of the Committee should be too much taken up in efforts to successfully defend a prosecution to enforce the penalties prescribed by the Act of Congress, or the various Boards of Trade, Exchanges and Clearing Houses

which selected them be adjudged to be unlawful combinations and as such be judicially dissolved.

III.

EXCHANGES DO NOT CONSTITUTE COMBINATIONS OR CONSPIRACIES IN RESTRAINT OF TRADE. ON THE CONTRARY, THEY PROMOTE AND FACILITATE IT.

These organizations have existed for so long a period and in so many cities, and their rules and dealings affect so much of the commerce of the world, that if trade is or ever has been *restrained* because of them, the proof thereof must be both patent and notorious. Indeed, it might be well said of them "*Vetustas pro lege semper habetur*"—Ancient custom is always held as law.

Packet Co. v. Catlettsburg, 105 U. S., 559, 563.

In the days of Elizabeth, when the promotion of commerce engrossed the attention of the English government and people, and which may be said to be the age when the commercial ascendancy of our mother country received its greatest impetus, Sir Thomas Gresham organized the Royal Exchange (1565–70). In 1571, the first purely mercantile Exchange was established at Cornhill, (Dos Passos, Stock Exchanges, 8), and this was the forerunner of the London Corn Exchange and of the many English Exchanges devoted to the trade in grain, wool and metals, and also served as the prototype for the Clearing House, and similar institutions, all of which, in the eyes of the law, "are *in the nature of business clubs.*"

Stutfield & Cantley, London Stock Exchange, 2 ed., p. 3;
Caldicott v. Griffiths, 8 Ex., 898, 903, 904;
Belton v. Hatch, 109 N. Y., 593, 596;
"Lloyd's," 45 Fortnightly Rev., 527-530.

Exchanges differ from the trade guilds of ancient

times in the respects which caused certain of the by-laws and regulations of those bodies to be contested in the courts, and which rendered them obnoxious in the eyes of a number of political economists. The striking fact that Exchanges, Clearing Houses, and kindred associations, were not only permitted to be formed but were encouraged by the active support of the government and earnest plaudits of the whole people, in days when contests against restraints on trade and monopolies were constantly before the courts and formed the subjects of many political and economical discussions, speaks louder than a wealth of authority in favor of their status under the law and in the light of public policy.

Associations to Regulate the Manner of Conducting Trade.

However, by scanning the cases which involved the validity of given rules of trade guilds, the specific and fundamental distinction between illegal combinations, and associations for *the good of trade*, is found to be conclusively established.

In 1668, nearly fifty years before Mitchel v. Reynolds definitely overturned the drastic rule which had been laid down in Dier's case in 1415, one of the trade guilds was assailed as being in restraint of trade and as tending to a monopoly. In upholding the lawfulness of the organization, the distinction was outlined as logically flowing from Player v. Jenkins, Sid., 284; 2 Keb., 27, (1665), that, instead, its rules constituted a a mere *regulation for the fair and orderly conduct of trade*, and were designed to provide conveniences to that most commendable end.

Freemantle v. Silk Throwsters Co., 1 Lev., 229.

In 1684, it was noted, in considering the validity of the charter of the East India Company, conferring the exclusive privilege of trading with the Indies,

against the objection that it was void as a monopoly, that "it is observed by many historians that the most flourishing trades have been begun by united stocks and policies"; and that "*a straggling trade* managed by particular persons, whilst everyone strives to defend his own private interests, *will ruin the trade* in general."

East India Co. v. Sandys, 10 How. St. Tr., at 540, 547.

In Wannel's Case, 1 Stra., 675; 8 Mod., 267, decided in 1725, (11 years after Mitchel v. Reynolds), the general question received elaborate consideration. There, the plaintiff had served as apprentice to a merchant tailor for the prescribed period. He demanded the freedom of the City of London, apparently for the purpose of setting up as a joiner. It was objected that an ordinance of that city (which, for all practical purposes, stood on the same basis as a guild rule, for it was not valid if unreasonable), prohibited any one from acting as a joiner therein without being free of (*i.e.*, belonging to or permitted by) the Joiner's Company. The provision was attacked as being *in restraint of trade* and defended as being *for the benefit of trade*. "And of that (the latter) opinion was the Court, it being properest for such a person to be under the regulation of that Company who understood the trade best." On a second argument, Lord Chief Justice RAYMOND, for the court, said: "We are all of opinion that this is a good by-law, being made in *regulation* of trade (and not in restraint thereof, 8 Mod., at 270), and to prevent fraud and unskilfullness, of which none but a company that exercise the trade can be (competent) judges."

In Rex v. Harrison, 3 Burr., 1322, the same question was raised as to the validity of a similar ordinance concerning the Company of Butchers. It was argued that "this by-law *restrains trade*. It narrows the privilege and is an injurious restraint to trade and traders, and a clog to their liberty. * * * And the increase of their profits is the only purpose of this

by-law." (1326.) In answer, it was argued by Mr. Eyre that there was *no restraint but a regulation of trade*, by the proper conduct of which the public was largely benefited. (1327.) The court was "clearly and unanimously" (so the report recites) of the opinion that the by-law was valid, Lord MANSFIELD saying: "*This is a regulation of a very extensive trade.*" DENISON, J., added: "*This is only regulating the trade to what is most right and reasonable.*" (1328). Wannel's Case was fully approved.

Subsequently, Lord MANSFIELD declared the distinction between a *restraint* of trade and a *regulation* of some branch thereof, to be "*a very clear case.*"

Pierce v. Bartrum, 1 Cowp., 269.

So, too, by virtue of a series of Parliamentary grants, the city of London was authorized to *regulate* the occupation of a broker and to forbid any one to act as such who had not been duly admitted. The scope of the regulations made is disclosed by the conditions of the bond required to be given (set out in full in *Ex parte* Dyster, 1 Meriv., 155 and Green v. Weaver, 1 Sim., 404, 412), among which are that such a broker was prohibited from "buying any goods, etc., to barter and sell again *upon his own account*, or for his own or any other broker's benefit or advantage;" he was obligated not to "make any gain or profit in buying and selling any goods over and above *the usual brokerage;*" and it was enjoined on such brokers that they "shall not employ any person to act under him to act as a broker not being duly admitted as aforesaid, and *shall not presume to meet and assemble in Exchange Alley, or other public passage or passages within this city and liberties thereof, other than upon the Royal Exchange.*"

In Cope v. Rowlands, 2 M. & W. 149, 151, 159, Mr. Baron PARKE declared that the policy thus evidenced "appears to have existed in the earliest times, and *for the convenience of trade and the public good*," and in Green v. Weaver, 1 Sim., 404, 422, these views

were reiterated and (at p. 433) a case involving the matter of properly regulating brokers was declared to be one of "vast importance to the commercial interests of the country."

Smith v. Lindo, 4 C. B., N. S., 395;
Scott v. Cousins, L. R., 4 C. P., 177.

A suit being brought to enforce the conditions of such a broker's bond, BEST, C. J., said: "I am satisfied that *no body of men will rejoice more in seeing the regulations enforced than the brokers themselves*," which has been quite as true on the part of all reputable brokers to the present day.

Proctor v. Brain, 3 C. & P., 536, 540.

In Robinson v. Kitchin, 21 Beav., 365, 371, it was ruled that by holding himself out as a broker, the defendant impliedly represented that he was subject to these regulations, "for *otherwise no person would employ him*."

REASONS FOR ESTABLISHING EXCHANGES.

In recognition of the absolute necessity that business shall be conducted under just and uniform usages, and that fair dealing and a high standard of business morality should be enforced, Exchanges have been formed and have at all times received the earnest support of Governments bent upon raising their nation or state to prominence in the commercial world. The Rialto and other points with which historians and other authors have made us familiar, illustrate the tendency to carry on a given trade at some fixed place. Out of this grew the organization of Exchanges, whereby a permanent place was provided, certain privileges brought into being, and the usefulness of the associates increased. As a result, trade was stimulated in general and attracted to a given market in particular. The public was benefited and the associates encouraged in their occupations.

Mr. Dos Passos, in his treatise on Stock Exchanges, which has been judicially characterized to be "a valuable contribution to the learning of the profession" (Eliot v. Merchants' Exchange, 14 Mo. App., 234, 243), declares in his admirable preface that the aggregate annual transactions of Stock Exchanges alone "reach figures which are simply *too vast for human comprehension to grasp*," and that such "Exchanges have become of *incontestable value to the public*." (III., IV.) He also declares that "it is absolutely certain that without the existence of great public marts like the New York and London Stock Exchanges *the marvelous development and progress of this country, which make it the admiration and wonder of the civilized world, would not have been attained*." (Preface, IV.)

"The business of buying and selling stocks, although of modern origin, has grown to be one of gigantic magnitude, employing yearly more capital, perhaps, than any other commercial pursuit."

Dos Passos, 343.

In Biddle on Stock Brokers (p. 40) it is said that "the associations have proved of such *commercial value*, and the Stock Exchange is so convenient and *useful* an institution, it has become almost the *sole medium* for the purchase and sale of stocks, etc."

In their treatise on the law of Produce Exchanges Messrs. Bisbee and Simonds say that "it will scarcely be denied that as an institution the Board of Trade has attained a position not inferior in influence and importance to any of the distinctive adjuncts of this commercial age. In fact, *it is now a factor in our material development as indispensable to its present entirety and future progress, as is either the railroad or the telegraph.* In its present form, indeed, the Produce Exchange is *a legitimate outcome of modern commerce, the necessity for which could be fully realized only in its absence*." (Preface, VI.)

The Paris Bourse can trace its history at least to

1304. (Dos Passos, 324.) The London Stock Exchange was formally organized in 1798 (Dos Passos, 261), and the New York Stock Exchange was established in 1792 and organized into an active body in 1817. (Dos Passos, 9.) It is noteworthy that the London and New York Stock Exchanges were both created by *voluntary contracts* and have continuously existed as *unincorporated associations.*

It is observed, referring to an author who wrote in 1622, that "the advantage of employing brokers as intermediaries in the purchase and sale of property seems to have been early recognized among the merchants," (Dos Passos, 6), and it has been judicially noticed by an authority of the greatest possible weight in this branch of the law, that by employing a broker "*inconvenience and hampering of trade*" were avoided, and that by not making such employment "there would be great risk of *missing the most profitable way of making the transaction*, which a broker would not" (Speight v. Gaunt, L. R., 9 App. Cas., 1, 20, 22).

And so it has been noted that it is a feature of nearly every Exchange that its members constitute the local market in particular commodities.

"Its transactions embrace nearly all business in certain lines, especially breadstuffs and provisions."

Eliot v. Merchants' Exchange, 14 Mo. App. 234, 237.

At the present day, especially "in the United States, business done through them is *generally restricted* to such brokers as are members of an Exchange."

Dos Passos, Stock Exchanges, 101, 102.

"It has become almost the *sole medium* for the purchase and sale of stocks, etc."

Biddle, Stock Brokers, p. 40.

The fact that "transactions therein *were confined to members*" was declared to be so well-known that a party invoking the services of a firm of brokers "must

be assumed to have employed them because they were such members, and he was not."

Kent v. Woodhull, 23 Jones & S., 311, 315.

In Nicholson v. Gooch, 5 E. & B., 999, 1000, the rules of the London Stock Exchange "are printed, and a copy formed a part of the case," and it was said that "the effect of those rules, so far as material to the present case, was, that *all dealings on the Stock Exchange must be between members*," and in *Ex parte* Grant, 13 Ch. Div., 667, the rules being again set out (668–670), it was noted that by ceasing to be a member a person was no longer "capable of *dealing on or entering* the Stock Exchange" (670). To the same effect, White v. Brownell, 2 Daly, at 342. And this Court noted, in Hansen v. Boyd, 161 U. S., 397, 408, that the transactions there in question "were to be made on the Chicago Board of Trade *with the members thereof*."

The same situation was likewise noticed in Brass v. Worth, 40 Barb., 648, 654, and Child v. Hugg, 41 Cali., 519, 521.

And though "all persons are *sedulously excluded* who are not members, * * yet strangers can always be represented by brokers (members) of their own choosing, who will carry out the wishes of their principals" (Dos Passos, 209), or, if necessary, sub-employ some broker who can do so (Maryland Ins. Co. v. Dalrymple, 25 Md., 240, 260).

RULES CONSTITUTE A CODIFICATION OF TRADE USAGES.

In an important case, Lord HATHERLY, speaking in the House of Lords concerning the rules of an Exchange, with that accuracy and perspicacity which make his utterances so valuable a contribution to the law, defined these rules to be A CODIFICATION OF "THE USAGES AND CUSTOMS WHICH HAVE BEEN ESTABLISHED BY THE PARTIES IN THAT MARKET, AS AMONG THEM-

SELVES FOR THE BETTER CONDUCT OF THEIR BUSINESS."

Nickalls v. Merry, L. R., 7 H. L., 530, 546, 547.

Judge FOLGER embodied the same thought in describing an Exchange to be a market "where *the power to deal* is a privilege obtained by payment of a fee and is restricted to a body which has, for its regulation and government, come under certain prescribed rules or *established usages.*"

Walls v. Bailey, 49 N. Y., 464, 473.

Lord Justice JAMES having indulged in a somewhat figurative allusion to the powers claimed by an Exchange, (4 Ch. Div., 555, 561), which that body "considered to contain an aspersion upon the whole body and its customs," (Melsheimer, Stock Exchange, 98), an appeal was taken to the House of Lords, not because there was any hope of reversing the judgment, but to the end that an authoritative characterization of Exchanges and their rules might be had. In the appellate court, Lord Chancellor CAIRNS, after collating the leading rules of the organization, said: "I can see *nothing whatever in the rules which is deserving of any animadversion whatever. They seem to me to be judicious and business-like rules.*"

Tompkins v. Saffery, L. R., 3 App. Cas., 213, 220, 227, 228.

Lord O'HAGAN said in the same case, p. 228:

"I feel bound to say that I see nothing in the case which impeaches the integrity, in purpose or in action, of the Stock Exchange. * * I think *there is no ground whatever for * * an imputation of impropriety either as to the rules of the body or the proceedings of its members.*"

Lord BLACKBURN said, on page 232, that by becoming a member of the Stock Exchange the party did not enter into "an agreement enforcible in law, but an *honorary agreement* that he would act in his dealings upon the Stock Exchange *according to its rules*, as long

as he continued to be a member." See also 237, 238.

Lord GORDON said, on page 238: "It is a *great matter* that there should be a code drawn up, not of course binding upon the public, but for the purpose of regulating their rights *inter se*, and with a view to promote equality in cases of difference amongst themselves."

As this case was decided by Lord Justice JAMES in December, 1876, and by the House of Lords in 1877, it is evident that the movement which culminated in the appointment of a Royal Commission, in the latter year, to examine into the history, operations, and rules of the London Stock Exchange, not only influenced the appeal, but had the effect of bringing the importance of the questions involved and the necessity of expressing conclusions with unusual care and precision, prominently before the House of Lords.

The Royal Commission included Lords PENZANCE and BLACKBURN, both known as eminent judges and as statesmen of large experience. Lord BLACKBURN was exceptionally well qualified to intelligently discharge the duty thus imposed upon him. He was, as has been noted, a member of the House of Lords when Tompkins v. Saffery, L. R., 3 App. Cas., 213, 232, was considered, and had previously discussed the same general question in a most exhaustive manner, (Maxted v. Paine, L. R., 6 Ex., 132, 147–181), and delivered an interesting opinion in Duncan v. Hill, L. R., 8 Ex., 242.

After hearing many witnesses and considering the matter *for more than fourteen months*, the Commission, in July, 1878, made an elaborate report to Parliament.

The conclusions of the Commission, printed in Dos Passos on Stock Exchanges (Preface, V., and see also text, 260, 261), were as follows:

"The main object of the association appears to be the *easy and expeditious transaction of business and the enforcement among themselves of fair dealing*.

"Our opinion is that, in the main, the existence

of such an association, and the coercive action of the rules which it enforces upon the transaction of business, and upon the conduct of its members, have been *salutary to the interest of the public.*

"We recognize *a great public advantage* in the fact that those who buy or sell for the public in a market of such enormous magnitude in point of value, should be bound in their dealings by rules for the enforcement of fair dealing and the repression of fraud, capable of affording relief and exercising restraint far more prompt, and often more satisfactory, than any within the reach of the courts of law."

The Commission closed its report as follows:

"It is recommended by us, not because we have any reason to think that the present association has at all, in the main, fallen short of its duties in the past, but rather *for the purpose of strengthening its hands and increasing its efficiency in the future*, that the London Stock Exchange be incorporated either by Royal Charter or an Act of Parliament; and if, PRESERVING THE ELEMENT OF SELF-GOVERNMENT, *additional weight could be given to the institution*, and additional consideration and reliance be bestowed upon its members, by investing the existing association with a public character in the form of a charter of incorporation, we are of opinion that it would be *a sensible gain to the public.*"

This was a public document and had been known for *twelve years before Congress passed the Anti-Trust Act of 1890.* The report had been published by Dos Passos in 1882. It expressed the conclusions of eminent statesmen and has been acquiesced in by Parliament and the commercial world.

It may, therefore, be fairly said that no person was ever better qualified than Lord BLACKBURN to express an opinion upon the status and merits of Exchanges, and in respect of the effect of such bodies, their rules and operations, upon trade and the interests of public;

and his deliberate conclusions, judicially recorded in 1884, six years after this Report had been made, are consequently entitled to the very greatest possible weight.

An action was brought to charge a trustee under a will with the loss of a very large amount (£15,275) resulting from the dishonesty of a broker whom he had employed to invest that sum on behalf of the trust estate. The broker was located at Bradford, where there was no Exchange, and having reported that he had purchased the desired securities on the London Stock Exchange and rendered an account to that effect, the trustee, without any further inquiry, paid him the amount, although the securities were not produced. In fact, no such securities had been bought, and the broker absconded with the funds. The result was an exhaustive examination into the question whether he was chargeable with negligence.

In expressing his opinion that the trustee was not liable, Lord BLACKBURN made these interesting statements:

"The brokers in London first established a voluntary society who met in the Stock Exchange, so that London brokers who had been instructed to buy or sell might meet and make their bargains. Then, *with a view to economize business, on the same principles as those which led the bankers to establish a clearing house*, the rules of the London Stock Exchange were established, which from time to time have been improved and altered. * * *This system has been found to work in practice so satisfactorily* that not only are enormous sums paid on the account day in London, but the brokers in those large towns, where the business is sufficient to make them what a witness calls 'Stock Exchange centers,' have established Stock Exchanges of their own with rules not identical with those of the London Stock Exchange, but founded on the same principles."

Speight v. Gaunt, L. R., 9 App. Cas., 1, 21.

The nature of this litigation was such, the amount involved so large, the learning of the eminent counsel who appeared for the plaintiffs, (among whom were included gentlemen now well-known as Lord Justice RIGBY, Mr. Justice STIRLING, and Sir FRANK LOCKWOOD), so profound, and the necessity to challenge the propriety of a resort to the Stock Exchange and a reliance, by the defendant, upon its rules, so pressing, that their acquiescence in the lawfulness of the machinery invoked by the trustee, is a most persuasive consideration. Lord BLACKBURN'S conclusions were in affirmance of the judgment of the Court of Appeal and in concurrence with his associate Lords.

In the Court of Appeal, Sir GEORGE JESSEL, M. R., proceeded in acceptance of the opinion expressed by Lord Chancellor HARDWICKE (in *Ex parte* Belchier, Amb., 218) that where a trustee acts "conformably to the common usage of mankind," he is not liable, and that to show a want of confidence in the integrity of broker employed accordingly, "would tend *greatly to the hindrance of business.*" The Master of the Rolls proceeded that, in accordance with "the ordinary course of business transactions * * * a man who buys stock on the Stock Exchange employs a stockbroker, and *there it is absolutely necessary for him to do so: he cannot buy himself.* * * * I cannot understand why it should not be a lawful custom to give the money to your broker to pay for the stock, which you cannot get without the money. * * * *There is nothing unlawful or unreasonable in it. You cannot get the stock on the Stock Exchange without dealing with a broker.*" (742, 745, 754). Similar statements were made by his associates (LINDLEY, L. J., at 762, and BOWEN, L. J., at 763). Lord Justice LINDLEY took judicial notice of "the way business is done through brokers in buying ordinary stock" (759), for which a precedent which had been set by Lord KENYON

as far back as 1800. (Child v. Morley, 8 T. R., 610, 614).

Speight v. Gaunt, 22 Ch. Div., 727.

In the House of Lords, the Earl of SELBORNE, L. C., adopted these views, and justified the act of the trustee in paying over the money to the broker by a reference to the rule of the Exchange that no one but a member would be recognized in dealings had under the auspices of that body. He also said that its rules were so well-known that judicial notice might fairly be taken of them.

Speight v. Gaunt, L. R., 9 App. Cas., 1, 10, 12.

This case is recognized as declaring the true rule as to the liability of trustees under such circumstances.

1 Perry, Trusts, Sec. 404;

Horton v. Morgan, 19 N. Y., 170, 172.

It has recently been declared, speaking of the Boston Stock Exchange, that its rules "are *appropriate means* for the quick and economic transaction of large volumes of business."

Dillaway v. Alden, 88 Me., 230, 236.

The accuracy of Lord BLACKBURN'S conception that the rules of such a body constitute "an honorary agreement" among its members is strongly confirmed in the very interesting treatise on "The Law and Customs of the Stock Exchange," by Melsheimer and Gardner, 3rd ed., London, 1891:

"The inviolability of bargains is the foundation stone of the whole Exchange system. * * The very notion of attempting to render any bargain void on account of a quibble or technical omission is altogether repugnant to the feeling of the Stock Exchange, and is regarded as dishonorable and discreditable in the highest degree. * * *The members have bound themselves together by a code of honor* based on the inviolability of bargains, and the maintenance of this standard has always been regarded as the *principal function* of

the Committee, (98). * * No statute of limitations is recognized on the Stock Exchange," (102).

Legal Status of Trade Usages.

The theory that the rules of such a body constitute *a codification af trade usages* has been recognized in many cases. The value of such usages is generally conceded to be exceedingly great, and their tendency to increase the facilities for the proper conduct of trade and the promotion of fair dealing, has been judicially declared. Indeed, Lord Chief Justice Cockburn has shown that the law merchant "is neither more nor less than *the usages of merchants in the different departments of trade*, ratified by the decisions of courts of law, which, upon such usages having been proved before them, have adopted them as settled law, *with a view to the interests of trade and the public convenience.*"

Goodwin v. Robarts, L. R. 10 Ex., 337, 346.

In some of the cases a disposition has been manifested to limit the value and effect of usages, generally speaking. The reasons given,—the principal one being that thereby a meaning might be ascribed to given language different from its construction under common law rules,—have little, if any, force (especially at the present day), when the subject under consideration consists of *mercantile or trade usages*. There is a universal acceptance of the proposition that when such usages are uniform, reasonable, and generally known, they are of the utmost utility and of the greatest possible benefit to trade in general.

In view of the great volume of business done by means of the machinery and facilities provided by Exchanges, a series of mercantile usages adopted by such bodies necessarily become invested with the important elements of *uniformity*, and of *notoriety*, especially when embodied in the published rules of such a body and acted under day by day, in countless instances. It

is a necessary consequence that such a usage will, in the course of time, attract to itself the characteristic of being judicially noticed.

Rennert v. Bank of Columbia, 9 Wheat., 581, 585, 588;
Consequa v. Willings, 1 Pet. C. C., 225, 230;
Brandao v. Barnett, 12 Cl. & F., 787, 805;
In re Catford, 15 Reports, 3, 5.

A learned court, after emphasizing that such usages were for the convenience of trade and the public benefit, said that "this process of law-making is perhaps the most unexceptionable," and that when commercial interests were involved, a code of approved trade usages was preferable to the necessarily unbending declarations of legislative enactments.

Connor v. Robinson, 2 Hill, So. Car., 354, 358;
Also, Barlow v. Lambert, 24 Ala., 704.

However, it is by considering whether the *propriety and reasonableness* of the usages thereby codified, *i. e.*, whether all concerned have shown their concurrence in their fairness by permitting the provision to attain the force of an established uniform usage, (Goddard v. Merchants' Exchange, 9 Mo. App., 290, 296), and whether experience has demonstrated that a given code of rules is of *public convenience* and to *the advantage of trade*, that some phases of the status of Exchanges can be fairly judged in analogy to the rules laid down in reference to recognized mercantile usages.

A very high authority has declared that "*the universality of a usage* voluntarily adopted between buyers and sellers *is conclusive proof of its being in accordance with public convenience.*"

Goodwin v. Robarts L. R., 10 Ex., 337, 353.

The American courts have said:

"There are *none more interested* than those immediately concerned in the particular trade to establish those usages that are *reasonable in themselves* and *precisely suited to the occasion.*"

Connor v. Robinson, 2 Hill, (So. Car.), 354, 358;
Baxter v. Rodman, 3 Pick., 435, 440;
Leach v. Beardslee, 22 Conn., 404, 409.

Such usages "are generally found in practice to exhibit a *superior adaptedness to the convenience and wants of the community* to those which are superseded by them and in this way *development* and *progress* result. * * *It is not likely in modern times that anything unreasonable would be suffered to grow into a usage.*"

McMasters v. Pennsylvania R. Co., 69 Pa. St., 374, 378;
Kershaw v. Wright, 115 Mass., 361, 365.

"In great centers of trade where the volume of business is immense, usages which facilitate the completion of transactions and the final settlement of accounts between the parties interested, are natural and indeed *necessary*."

Everingham v. Lord, 19 Ill. App., 565, 570.

RULES FOR THE ORDERLY CONDUCT OF BUSINESS AND REGULATING COMPENSATION FOR SERVICES RENDERED.

Following the principle laid down in Player v. Jenkins, Sid., 284, and in Player v. Vere, T. Raym., 288, 324, it has been repeatedly recognized that regulations designed to free commerce from inconvenience and to secure *its orderly conduct*, instead of being an injury, are a commendable advantage to the public interests.

Perkins v. Lyman, 9 Mass., 522, 530;
Leslie v. Lorillard, 110 N. Y., 519, 534;
Case of Boot & Shoe Makers, Carson's Edition of Wright on Criminal Conspiracies, p. 146.

In Grissell v. Bristowe, L. R., 4 C. P., 36, 48, Lord Chief Justice COCKBURN, speaking of an Exchange rule, declared that "*a usage founded on the general con-*

venience of all persons engaged in a particular department of business can never be said to be unreasonable," or, to state it in another way, a rule or practice concurred in by all who are engaged in a given trade and interested in its promotion must necessarily secure its proper conduct and protect it from injurious happenings. Mayor v. Hall-day, L. R., 1898, 1 Q. B., 125. 130.

This construction of the proposition is supported by Mr. Chief Baron KELLY's emphatic declaration, in the same case, that in the absence of an exchange, and brokers constituting it, there would be "a state of things which, in this country, where some hundreds of these purchases and sales are effected every day, would be found *intolerable*, and *would speedily demand a remedy than which no better could be devised than this practice so long established.*"

Grissell v. Bristowe, L. R., 4 C. P., 36, 53.

He substantially repeated these expressions in a case which disclosed that in order to act as a broker to conduct transactions on 'Change it was necessary to be a member of the organization.

Duncan v. Hill, L. R., 6 Ex., 255, 259, 266, 267.

In Maxted v. Paine, L. R., 4 Ex., 203, 218, BRAMWELL, B., declared of the Chief Baron's conclusions, that "*nothing can be better said.*"

Such rules also have the highly commendable effect of inculcating and enforcing an adherence to a high standard of commercial honor. As phrased by LUSH, J., referring to one of the rules of an Exchange, "it is as much the interest of that body, as it is *the interest of the public* who buy and sell through their agency *to promote fair dealing.*"

Maxted v. Paine, L. R., 6 Ex., 132, 142.

In the same case, BLACKBURN, J. outlined that "the committee of the Stock Exchange exercise a power over the members very analogous to that which the courts of law summarily exercise over the attorneys who are officers of their courts."

Maxted v. Paine, L. R., 6 Ex., 132, 177.

The typical Exchange "undertakes to exercise a salutary control over its members, * * and scalpers' (persons undertaking to deal otherwise than in conformity to its rules) cannot live in that atmosphere, they bearing the same relation to that fraternity of *commercial gentlemen* that *shysters* do to full-bred lawyers."

Clark v. Foss, 7 Biss., 547, 555, (affirmed on appeal, not reported, but stated in Ward v. Vosburgh, 31 Fed. Rep., 12, 15).

The general proposition has been long since and most firmly established that the rules and regulations of an Exchange define the powers of members thereof when employed as brokers or other agents, and become parts of all contracts made with reference thereto. (Bibb v. Allen, 149 U. S., 481, 489, 491, 501). This is true, in most instances, even though the party sought to be affected had no actual knowledge of the existence or terms of the rule in question.

Sutton v. Tatham, 10 A. & E., 27;
Mitchell v. Newhall, 15 M. &. W., 308;
Stray v. Russell, 1 E. & E., 888, 900;
Nickalls v. Merry, L. R., 7 H. L., 530;
Cruise v. Paine, L. R., 6 Eq., 641, 650; 4 Ch. App., 441;
London Founders' Asso. v. Palmer, 20 Q. B. D., 576, 580;
Peabody v. Speyers, 56 N. Y., 230, 233;
Bailey v. Bensley, 87 Ill., 556, 559;
Perine v. Parker, 25 Ill. App., 465, 469, 470; affirmed, 126 Ill., 201, 211, 212;
Kraft v. Faucher, 44 Md., 204, 215, 216;
Melsheimer, Stock Exchange, 33;
Dos Passos, Stock Exchanges, 356-362.

In respect of the element of the agent's compensation, the rule is that one who employs a member of

an Exchange thereby agrees to pay the commission or brokerage fixed by the rules.

If a given schedule has been universally recognized, by all interests, for a long period (here, then years), and after having been practically applied to many transactions (here, countless thousands involving, annually, property worth millions of dollars), it is not only conclusively reasonable, but if the volume of business has increased and the industry affected has developed or progressed under the operation of such schedule, it is *in palpable denial of irrefragable facts and of established truth* to say that trade has been restrained or injured by the schedule in question.

Such a rule establishes *uniformity;* its wide circulation brings its terms to the *knowledge* of every one dealing at that market, or the commodity there dealt in; and its operation in actual practice furnishes the best test for determining whether the rates thus prescribed are *fair* and the rule itself *promotive of trade.*

In the present instance, the rates fixed are so firmly entrenched and so conclusively reasonable that if a question of compensation for similar services should arise between parties, *neither of whom belonged to the Exchange*, the usual or reasonable compensation to be paid in that case would doubtless be determined with reference to the rates fixed by the rules of that body.

Thomas v. Brandt, 26 Atl. Rep., 524, (Md.);
Sewell v. Corp, 1 C. & P., 392;
Kock v. Emmerling, 22 How., 69, 74;
Stewart v. Cauty, 8 M. & W., 160;
Bayliffe v. Butterworth, 1 Ex., 425;
Morgan v. Mason, 4 E. D. Smith, 636, 638;
Miller v. Insurance Co., 1 Abb. N. C., 470, 476.

This is clearly so if the rates thus fixed are of such general notoriety as to warrant the inference of knowledge thereof on the part of the employer.

Laver v. Hotaling, 46 Pac. Rep., 1070, (Cali., 1896);

Hansbrough v. Neal, 27 S. E. Rep., 593, (Va. 1897).

It is to be observed that nearly every case between broker and client to be found in the books involved, among others, a claim for the *prevailing commission*, and that while occasionally question has been made whether the broker was entitled to be compensated at all, in not a single instance was it even hinted that the rates fixed by the rules did not correctly measure the amount to be paid or the *reasonable value* of the work done by a member of an Exchange. For illustrations, see, among others:

Roundtree v. Smith, 108 U. S., 269;
Irwin v. Williar, 110 U. S., 499;
Bibb v. Allen, 149 U. S., 481;
Hansen v. Boyd, 161 U. S., 397;
Gilbert v. Gaugar, 8 Biss., 214;
Bangs v. Hornwick, 30 Fed. Rep., 97;
Ward v. Vosburgh, 31 Fed. Rep., 12, 18;
Rorke v. Stock Exchange, 99 Cali., 196, 199, 201.

So, too, in considering the dealings on Live Stock Exchanges, "the commissions on the sale" came under notice.

Cordell v. Hall, 34 Fed. Rep., 866; 142 U. S., 116, 117;
Union Stock Yards Bank, v. Gillespie, 41 Fed. Rep., 231; 137 U. S., 411.

And among the benefits of an "enterprising" and "effective Exchange" is "the establishment of *regular warehouse charges*."

Hitch v. Hawley, 132 N. Y., 212, 214, 220.

Accordingly, payments of the usual commissions, being those fixed by the schedule of an Exchange, have been allowed to executors on settlement of their accounts.

Jones v. Powell, 6 Beav., 488;
Davenport v. Powell, 14 Sim., 275.

A Series of Inquiries.

If usages tend to the convenience of the public and are to the benefit of the trade, how can a codification of them be held to be illegal? It certainly greatly benefits trade that usages shall be made certain and that all controversy on the score of their uniformity shall be obviated. (Burbridge v. Gumble, 72 Miss., 371, 379). If a court will adopt an Exchange rule as evidence that a usage codified therein is so notorious that judicial notice may be taken of it, and declare that the universality of a usage so shown is proof conclusive of its fairness and its freedom from objection based on considerations of public policy, upon what principle can it be said that the Exchange or its code of rules operates in restraint of trade or marks the presence of a monopoly? Has it not become a usage, and even a *custom*, to establish an Exchange for the promotion of trade and the development of a market?

Why, may we ask, has London continued to be the great financial center of the world in spite of the herculean efforts of its Stock Exchange to *restrain the trade of that City?* Is it true that the New York Stock Exchange has become "*the heart of the business life*" of that City (Century Magazine February, 1897, p. 503), and that this is due to its "*long and honorable career* and the *high character of its members*" (3 N. Y. Supp., at 635), and that, nevertheless, its purpose, or the necessary tendency of the contract between its members, has been *to restrain trade?*

How has it been possible for Chicago to become the largest grain and live-stock market in the world, in spite of the existence of powerful conspiracies, in the form of two great Exchanges, to *restrain* trade in those commodities?

Must it not be said, either that such Exchanges *promote* trade, or that they are powerless to, and, there-

fore, do not, restrain, it? (Olmstead v. Distilling & Cattle Feeding Co., 77 Fed. Rep., at 269, 270).

The answer is to be found in the important fact that *the very first step* taken by any city aspiring to share in a given trade has been the organization of an Exchange. It is incomprehensible that while one body of men were seeking to *stifle* trade, their competitors elsewhere should believe it possible to *attract* trade to themselves by means of a similar *deterring combination.* And even more so, that this should have been not only permitted by the public but actually *encouraged in every possible way.* Thus, for what reason have Philadelphia, Boston, San Francisco, and Chicago permitted Stock Exchanges to become established and to flourish in their midst?

Is it not true, in direct contradiction of the theory of this action, that in every instance in which a given city has become a trade-center in some article of commerce, the growth and development of that branch of business has been and is still due *directly to an Exchange*? And is it not likewise true that every city aspiring to share in a given trade has employed the instrumentality of an Exchange? When a Grain Exchange was established at Chicago, was the example not followed by every city in the Union known as a grain market: New York, Philadelphia, Baltimore, St. Louis, Kansas City, Milwaukee, Minneapolis, Buffalo, Detroit, and Toledo? The same is true in the cotton trade, for the Exchange at New Orleans was speedily followed by similar organizations at New York, Charleston, Savannah, Mobile, Memphis, Galveston, Houston, and other points. The business of selling live-stock was no exception to the rule; the establishment of an Exchange at Chicago was followed by Exchanges of the same character at Kansas City, St. Louis, Omaha, Indianapolis, Buffalo, Sioux City, and other points. *Is there a single city in the civilized world which ranks as a leading market for a given commodity in which*

there is not an Exchange? And is there one which does not owe its standing and importance principally, if not entirely, to the existence of an Exchange?

It is no answer to say that the Exchanges differ in their characteristics and rules. Instead of such being the fact, it has been repeatedly noticed, by courts and authors, that *they are all framed on the same model* (99 Cali., 399). Indeed, in the most essential respects their rules are literally or substantially the same. Exchanges devoted to a given business present the features adopted to that business with a striking degree of identity to each other. An amendment, or the adoption of a new feature, at one point, has been speedily followed by similar action at all competitive markets. In all of them are to be found the features which this bill denounces as illegal, so far as the same have application to the business to which they respectively relate.

All Live Stock Exchanges have precisely the same rules and regulations. If this Exchange is an unlawful conspiracy, every other Exchange must likewise be condemned.

And yet it has been said, apparently as a matter of universal acceptance, and certainly without having provoked the slightest dissent or criticism, that "in its present form, the Exchange is *a legitimate outcome of modern commerce, the necessity for which could be fully realized only in its* ABSENCE."

Bisbee and S., Produce Exchanges, Preface, VI.

CONTRACTS TO FACILITATE TRADE.

The distinction between contracts or combinations to *restrain* trade, and those entered into for the purpose of *facilitating* trade and whose effect is its *promotion*, is not only recognized by the many cases decided by this in construing the Federal Constitution, including Cannon v. New Orleans, 20Wall., 577, Packet

Co. v. Keokuk, 95 U. S., 80; Sands v. Manistee River Improvement Co., 123 U. S., 288, and others of a similar nature cited, *supra*, but it is also established as fundamental and of decisive importance.

Thus, in a leading English case, a contract had been made between the owner of certain docks and a railway company, by which it was agreed that the railway company should have the right to use certain property belonging to the dock owner, and in consideration thereof bound itself for the period of 250 years that *all property coming to that port by means of its railway or any part or branch thereof should be unshipped at said dock*, and that if the railway company unloaded any of the freight secured by it *at any other dock*, it would pay to the owner of the dock the *same wharfage dues* provided to be paid for goods actually unloaded there.

Subsequently, the railway company made an arrangement by which it became the lessee for 999 years of a neighboring dock. Being sued under the former agreement, the validity of it was challenged, among other grounds, because it was *in restraint of trade.* The question was argued by counsel of the highest eminence and ultimately decided by the House of Lords.

LORD CHELMSFORD said, "*How it can be considered to be in restraint of trade, I cannot conceive.* It is NOT A PROHIBITION BUT A PERMISSION TO CARRY ON TRADE." (176.)

Taff Vale Ry. Co. v. MacNabb, L. R., 6 H. L., (Eng. & Ir. App. Cas.), 169.

"The contract certainly puts no restraint upon the freedom of the commodity to which it relates. It imposes no obligation upon nor offers any inducement to any person to produce less than the full extent of his capacity. On the contrary, its apparent purpose is, by making prices more uniform and regular, *to stimulate*

*and increase production. * * The contract intends that the parties shall make sales.*"

Central Shade Roller Co. v. Cushman, 143 Mass., 353, 363.

In an elaborately considered case involving the right of the Kansas City Commercial Exchange to regulate the inspection of grain at point—declared to have "become one of the great grain markets in the world"—, it was said that "for many years associations of merchants have appointed and employed experts to inspect grain. It was done to FACILITATE TRADE." And the court held that the right to limit dealings to grain thus inspected, the business being private, could not *constitutionally* be interfered with.

State *ex rel.* Attorney-General v. Smith, 114 Mo., 180, 191, 194, 199.

There is no matter upon which the public mind has been so quick to make complaint, and to originate legislation, as in denunciation of monopolies. Hence, the consensus of conclusion that such Exchanges, with their "long and honorable careers," have contributed more to the development and promotion of industrial enterprises than all other agencies combined, is proof conclusive that they are neither odious nor fraught with a tendency to injure the public welfare.

"If the (contrary) doctrine be sound, then a multitude of contracts convering many and diverse subjects, and which are being entered into every day of the world, and recognized and acted upon by both parties and courts, must fall to the ground."

Stephens v. Southern Pac. R. Co., 109 Cali., 86, 94.

THE STATUS OF COMPETING NON-MEMBERS.

It is charged by this bill in general terms that the members of the defending Exchange, are desirous that some one of them shall be employed to make sale of

every consignment to the Stock Yards at which they do business, and that consignors shall be "compelled" to pay to such member the commissions fixed by the rules. Stripped of all denunciatory verbiage, this allegation may, with the same force, be applied to every association of persons in trade or having an occupation or profession. The ambition is, indeed, highly commendable. Its success cannot, consistently, be branded as unlawful and criminal. The end being lawful, and no means being invoked which are contrary to law, it is impossible to work out an actionable wrong. "*The normal operation of competition in trade is the keeping away or getting away patronage from rivals by inducements offered to the trading public. The normal operation of the right to labor is the securing of better terms by refusing to contract for labor except on such terms.*" (TAFT, J., 62 Fed.Rep.,at 820.) "The effort of all competition is to drive out other competitors." (70 Fed. Rep., at 388.) No competition, *however successful*, is unlawful which is neither fraudulent nor forcible. (1892, App. Cas., at 47, 51.) So long as the public is served faithfully and adequately, and at reasonable prices, its interests are to foster and promote such associations. (64 Fed. Rep., at 950.)

Thus, where a principal instructed his broker not to conform to the rules of an Exchange to which the latter belonged in reference to a given transaction, and agreed to indemnify him for all losses he might sustain in the premises, the Court noted that "as a condition of admission to that Board and into the rooms occupied by it, the plaintiff (broker) agreed to be bound by certain rules. *Unless the plaintiff had such admission he could only carry on his business by employing other brokers who had such admission and to great disadvantage to himself*," and held that the agreement referred to was valid and supported by *a lawful and adequate consideration.*

White v. Baxter, 9 Jones & S., 359, 360, 368; affirmed, 71 N. Y., 254;

Harker v. Edwards, 57 L. J., Q. B., 147;
Smith v. Reynolds, 66 L. T. Rep., N. S., 808 810.

In Sewell v. Ives, reported in Dos Passos, Stock Exchanges, note, pp. 47, 48, the fact that the enjoyment of his membership was "*absolutely essential* to the discharge of plaintiff's business as a broker" was adjudged to add nothing to his legal rights.

Indeed, it is the distinguishing characteristic of an Exchange that "the power to deal" in its rooms or under its auspices and rules (even though the nature of the business is such that it cannot be transacted in a closed room, *ex gr.*, selling live-stock in the open air), is restricted to the members of the association.

Walls v. Bailey, 49 N. Y., 464, 473.

Such a provision is not only reasonable but absolutely essential to the existence and proper maintenance of an Exchange.

McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 15 N. Y. Supp., 206.

In pursuance of "the policy of the law, for the advantage of the public, to encourage and protect commercial enterprise," contracts not to divulge trade secrets (and, in principle, an agreement not to extend the benefits of the advantages of a commercial club to competing non-members, stands on precisely the same basis), are universally upheld. "If a man establishes a business (or if a number of associates do so), and makes it valuable by his skill and attention, *the good-will of that business is recognized by the law as property.*"

Peabody v. Norfolk, 98 Mass., 452, 457;
Salomon v. Hertz, 40 N. J. Eq., 400, 402;
Thum v. Tloczynski, 72 N. W. Rep., 140, 144, (Mich., 1897);
Washburn v. National Wall Paper Co., 81 Fed. Rep., 17.

The contention that a party must conduct his business under the motto that "competition is the life of

trade," coupled with the restriction that the moment his competition becomes irksome or injurious to a competitor, he is subject to the criminal law, is *felo de se.*

It has been so indicated, with admirable precision:

"It is difficult to see how, in the case of conflict of interests, it is possible to separate the two objects of benefiting yourself and injuring your antagonist. * * *Gain on one side implies loss to the other;* and *to say that it is lawful to combine to protect your own interests, but unlawful to combine (where the result is) to injure your antagonist, is taking away with one hand a right given with the other.*"

3 Steph. Hist. Crim. Law, 218, 219.

The Advantages of Exchanges.

By means of such organizations, inspired and managed by those who, of all others, are most deeply concerned in furthering the commercial interests affected thereby, manifest advantages result to the public:

Trade is promoted; better facilities provided; fixed and reasonable rates established; the odious and harmful system of rebates and discrimination, formerly prevailing, as outlined in the complainants' rebuttal affidavits, exterminated; unfair methods prohibited; honest dealing inculcated; a "great and growing market" built up; the taxable wealth increased; employment given to many people; and every lawful industry affected thereby is benefited to a greater degree than by any other "distinctive adjunct of this commercial age."

It has been ruled that the Attorney General will not be permitted to destroy such an instrumentality, even though it may invade what is a strict public right.

People v. Horton, 64 N. Y., 610, 617, 618;
Raritan Township v. Port Reading R. Co., 49 N. J. Eq., 11, 16.

Unless it be true that such an Exchange is a "fac-

tor in our material development as *indispensable* to its present entirety and future progress, as is either the railroad or telegraph," and that it "is a *legitimate* outcome of modern commerce, the *necessity* for which could be fully realized only in its absence" (Bisbee & Simonds, Preface, VI.), why is it that the laws of all the States either expressly provided for or permit their organization, and that the courts, American, English and French, by a long and unbroken line of authorities, adjudge such an association to be "*a lawful body, organized for lawful business purposes* (Bibb v. Allen, 149 U. S., at 489), and its rules "*to be deserving of no animadversion whatever*" (Lord Chancellor CAIRNS, 3 App. Cas., at 220), and not to be "open to objection on the ground of *public policy*" (Mr. Chief Justice FULLER, 142 U. S., at 12; SAWYER, J., in Hyde v. Woods, 2 Sawy., 655); and declare their purpose to be a "*laudable one*" (*In re* Haebler, 149 N. Y., 414, 425; State v. Chamber of Commerce, 47 Wis., at 685)?

Why, else, did a Commission embracing some of the most eminent statesmen and jurists of the age solemnly report, after thorough investigation and long reflection, that the existence of such an association, referring to one far more powerful and an infinitely greater "monopoly" than the one at bar, has "been *salutary to the interests of the public*," and, instead of recommending that steps be taken for its immediate and effective dissolution, strongly urge affirmative action "for the purpose of *strengthening its hands and increasing its efficiency* in the future" (Dos Passos, Pref., V.)?

It must certainly be conceded that it has become *a usage of the mercantile world* to establish Exchanges for the promotion of trade, and cannot justly be denied that "*the universality of a usage is conclusive proof of its being in accordance with public convenience*," (L. R., 10 Ex., at 353), and "*precisely suited to the occasion*" (2 Hill, So. Car., at 358), or that, as a result of the organization of Exchanges, "development and progress" in

commerce have resulted (69 Pa. St., at 378), thus proving the practice to be indubitably reasonable and beneficial to trade, (L. R., 4 C. P., at 48, 53).

In the light of all the considerations which have a legitimate bearing in the premises, an appeal to a judicial tribunal to overrule the conclusion of every judge, statesman, political economist, and author who has ever expressed an opinion on this most important subject, many times after exhaustive investigation and in the light of extended actual experience, may with very great propriety be answered in the language of a learned State court in a very recent case:

"It is not (would not only be) a case of the blind leading the blind, but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing, and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question. Before a judge can act intelligently in such a matter, he must have an amount of this special knowledge and experience which it will take him years to acquire. It is not sufficient that he takes his first lessons from the partisan, and perhaps perjured, experts, or so-called experts, produced by the parties at the trial," *ex gr.*, Wagoner's affidavit in the present case (Record, 253).

Steenerson v. Great Northern Ry. Co., 72 N. W. Rep., 713, 716, (Minn., 1897).

Similar views were expressed by Lord Chancellor HERSCHELL in Chartered Institute v. Lockwood, 1894, App. Cas., 347; 6 Reports, 219, 223.

The conclusion expressed by the circuit court that, at most, Exchanges were beneficial "*to the locality*" at which its members do business (Record, 270), is contradicted by the facts disclosed in many reported cases.

In Speight v. Gaunt, L. R., 9 App. Cas., at 21, Lord BLACKBURN outlined that in Great Britain a broker located at a city in which there was no organized Exchange executed his commission by means of a corre-

spondent, who belonged to one of the metropolitan bodies.

Very recently, the New York Court of Appeals decreed that "the transaction (then before it), in its essential features, is not different from *numerous others of daily occurrence.* The chief market for corporate stocks is in the city of New York. It is the *common practice* for persons desiring to purchase or dealing in stocks, *in other parts of the country*, to go to their banker and make their order, who makes the purchase or sale, as the case may be, through his correspondent in that city."

La Marchant v. Moore, 44 N. E. Rep., 770, 772 (1896).

The same course of dealing is disclosed in the carefully considered case of Skiff v. Stoddard, 63 Conn., 198. There, a broker doing business at New Haven, being charged to make certain purchases, employed members of the New York Stock Exchange to consummate the same (205), which they did by dealing with their *fellow-members* (206). The New Haven brokers charged a commission of one-eighth of one per cent. (205), being the rate fixed by the rules of the New York Stock Exchange (Dos Passos, p. 232, *n.* 2), and this was *divided* with the New York brokers (207), a course of business which the court adjudged to be "*in accordance with the uniform and recognized custom.*" (213, 216, 219).

To a similar effect:

Bangs v. Hornick, 30 Fed. Rep., 97;
Hansen v. Boyd, 161 U. S., 37;
Rosenstock v. Tormey, 32 Md., 169, 177;
Gregory v Wendell, 40 Mich., 432;
Allen v. McConihe, 124 N. Y., 342, 343;
In re Pierson's Estate, 46 N. Y. Supp., 557, 569, (1897).

So, too, many cases (the earliest one having been decided in 1712, Wilson v. Tooker, 1 Bro. P. C., 494),

recognize or decide that the market afforded by an Exchange is so manifestly superior in its general beneficial effects, that a sale of pledged property is properly made under its auspicies. The suggestion that the general public cannot attend such a sale is answered by the statement that a broker-member can readily be employed to act for all intending bidders.

Brown v. Ward, 3 Duer, 660, 662, 663;
Maryland Ins. Co. v. Dalrymple, 25 Md., 242, 261, 265;
Willoughby v. Comstock, 3 Hill, 389;
Wheeler v. Newbould, 16 N. Y., 392, 398;
Wicks v. Hatch, 62 N. Y., 535, 544.

Clearing Houses.

Lord Blackburn declared in Speight v. Gaunt, L. R. 9 App. Cas., 1, 21, that Exchanges were established "on the same principles as those which led the bankers to establish a Clearing House," and in *Ex parte* Haebler, 149 N. Y., 414, the Clearing House case of O'Brien v. Grant, 146 N. Y., 163, was cited, in connection with a number of decisions having direct reference to Commercial Exchanges, in answer to the objection that the rules of the New York Produce Exchange were "unreasonable, coercive, contrary to public policy, and invalid."

The case of O'Brien v. Grant, thus cited, affirmatively adjudged the validity of a code of Clearing House rules. That these organizations are properly regarded as prototypes of Exchanges is apparent from these points of substantial identity in the matters covered by the rules of a typical Clearing House: membership is at the option of the associates and exists subject to the conditions created by the rules; non-members are not entitled to the privileges of membership, nor to the advantages thereof; and, in many instances, *the charges to be made by members for collecting checks and drafts on*

non-residents are prescribed, as are *the rates of exchange to be charged* on drafts drawn on other cities and *of interest to be paid* on time deposits.

A well-known writer has recently said: "The Clearing House is a comparatively modern institution. It was established in London in 1775. The New York Clearing House was established in 1853; that at Boston, 1856; at Philadelphia and Cleveland, 1858; Baltimore, San Francisco, Cincinnati, Louisville, Indianapolis, and other large cities, soon after established similar institutions; so that now the chain of *Bank Exchanges* literally *goes around the world.*" (Hon. Thomas L. James, in COSMOPOLITAN MAGAZINE, March, 1897, at pp. 486, 487, Vol. XXII.)

In view of the analogy between the two organizations thus declared, it is important to note these additional facts: "The Clearing House exercises a supervisory watchfulness over the affairs of its members and bonds them all together in mutual helpfulness in time of commercial distress. The *United States Government is one of its members, and when the Treasury, embarrassed by the sudden strain of civil war, could look nowhere else for money, the New York Clearing House successfully tided it over its pressing need.* Created only for the purpose of local convenience, it has become *the mainstay of American finance in time of panic, and more than once has averted disaster to the whole business community.*" (MUNSEY'S MAGAZINE, March, 1897, pp. 672, 677, Vol. XVI.)

And yet, logically and in effect, if not in terms, the position of this complainant is that these organizations have been and are *criminal conspiracies and injurious to the public welfare!*

How, pray, is the *United States Government* to justify its membership in one of them?

That the beneficial achievements of such organizations are quite as renowned in times of peace, is clearly demonstrated in a summary of the history of the most

prominent Exchange which will be annihilated if the contentions of the present complainant are sustained: "From the year 1820, when the real history of the New York Stock Exchange may be said to have commenced, it has gone on steadily increasing in its members, *power and influence*, until today it can be safely affirmed to be *the most powerful organization of the kind in the world*; and by forming a mart where all kinds of securities can be promptly converted into cash, *it has largely contributed to the development* and wealth of the country by encouraging and sustaining our great railroad systems which have brought all parts of the Republic into a close relation to each other, and *firmly strengthened the union and prosperity of the States*".

Dos Passos, Stock Exchanges, 10.

"Exchanges have become *of incontestable value to the public.* * * It is *absolutely certain*, that without the existence of great public marts like the New York and London Stock Exchanges *the marvelous development and progress of this country, which make it the admiration and wonder of the civilized world, would not have been attained.*"

Dos Possos, Stock Exchanges, Preface, III., IV.; Bisbees & Sim., Produce Exchanges, Preface, VI.

IV.

The History, Objects, Operations, and Rules of Prominent Exchanges Considered.

The various Exchanges of the world are similar in all the respects which are relevant to this inquiry, and have been productive of careful consideration at the hands of text-writers and judges. They are also the subjects of a number of official reports, statistical and otherwise.*

*Note—As some of the publications herein referred to may not be readily accessible to the Court, copies of them have been deposited with the Clerk.

JUDICIAL DEFINITIONS OF AN EXCHANGE.

Exchanges have been judicially defined as follows:

"An association of persons engaged in the same kind of business, who have organized together for the purpose of establishing certain rules, by which each agrees to be governed in the conduct and management of his separate transactions or business. * * * Each purchase and sale is not for the joint benefit of the body, but is, *as it would be in any other place*, an individual transaction between the parties making it."

White v. Brownell, 2 Daly, 329, 336, 355, 356; S. C., 3 Abb. Pr. N. S., 318; 4 Abb. Pr., N. S., 162;

In re Haebler, 149 N. Y., 414, 428.

"The Board of Brokers is a voluntary association of persons who, for convenience in the transaction of business with each other, have associated themselves to provide a common place for the transaction of their individual business, agreeing among themselves to pay the expenses incident to the support of the objects of the association, in which each for himself, at stated hours of the day, and for his individual profit, may prosecute his own business, and enter into separate engagements with his fellow-members. *The association does not share in the losses of the individual associates; each member takes his own gains, and individually sustains the losses incident to his engagements.*"

Leech v. Harris, 2 Brewst. (Pa.), 571, 575, 576; American Com. Co. v. Chicago Live-Stock Exchange, 143 Ill., 210, 226.

"The organization of this board *grew out of a necessity* for *new and greater facilities* for exchange and negotiation incident to the rapidly developing industries of the country and the increasing number and value of its commercial securities."

Dos Passos, Stock Exchanges, 15;

White v. Brownell, 2 Daly, 329, 336, 337; S. C., 3 Abb. Pr. (N. S.) 318.

EXCHANGE—"A voluntary business association formed by its members for the purpose of buying and selling among each other, either as principals in their transactions, or as agents acting for parties who are not members of the body, and having a code of laws regulating the admission, conduct, suspension and expulsion of members. * * * It is a comparatively modern institution, and *has been developed step by step in response to the demands of business necessity*."

23 Am. & Eng. Ency. of Law, pp. 749, 750, 751.

"A voluntary association of persons by which each individual broker is enabled to carry on his separate business, under regulations made alike for the protection of himself and his client or principal."

Dos Passos, Stock Exchanges, 13, 15.

As recited in many of the special charters granted to various of these bodies and of the general statutes providing for their organization, and also in the preamble to nearly all the rules and regulations hereinafter noticed, "its general objects are the *promotion of trade* * * and prescribing rules and regulations under which it may be done."

Pitcher v. Board of Trade, 20 Ill. App., 319, 324, 325.

In the course of the existence of these several bodies, their status and attributes, and the validity of their various rules, have been many times considered.

THE PARIS BOURSE.

The PARIS BOURSE was harrassed for centuries by the efforts of persons who sought to enjoy the benefits of membership, which the organization limited to sixty, and who became known as *coulissiers*, occupying a rela-

tion much as do "curbstone brokers" of the present day. They charged *smaller commissions* than those prescribed by the rules of the Bourse and operated without the delays imposed by the organized body. By a judicial decision rendered in 1859, the right of the Bourse *to thus limit its membership to sixty persons* and the benefits of its controlling influence to its own members was judicially declared, and its competitors suppressed. The latter included "two hundred banking houses of great solidity." (Dos Passos, 331, 335.) The rules of this body are summarized *post.*

The London Stock Exchange.

The London Stock Exchange is doubtless one of the most potent commercial factors in the world.

Its origin and growth have been thus summarized:

"It was the custom toward the close of the seventeenth century for brokers and jobbers to congregate about the Bank of England, and they were given authority by statute to carry on their dealing in the rotunda of that building. (5 and 6 W. & M., c. 20, sec. 20.) But in 1698 the approaches thereto became so obstructed, that they were compelled to move their quarters to Change Alley. At length *the more respectable brokers* hired a house in Capel Court, to which any one desiring to buy or sell stock was admitted on payment of a small fee. So many *objectionable persons*, however, found an entrance under this arrangement that it became *necessary* to adopt some other method. Accordingly, in 1801 the present Stock Exchange was organized."

Lewis, Stocks etc., pp. 10, 11.

As disclosed by cases already cited, many of the rules of this body have been subjected to judicial scrutiny.

Primarily, the courts have at all times expressed their appreciation of the magnitude and importance of the interests at stake.

In a case decided in 1840, Lord ABINGER noted that the question involved "undoubtedly is one of a very important character, as it involves the practice of the Stock Exchange generally."

Mortimer v. McCallan, 6 M. & W., 58, 66.

Another case was declared to be "very important, in a general point of view, because it relates to transactions of great multiplicity and enormous amounts upon the Stock Exchange."

Merry v. Nickalls, 7 Ch. App., at 740, note.

The rules of this organization were attached to the record in Bowring v. Shepherd, L. R., 6 Q. B., 309, 313, note 1, and in deciding the case the Court noted "the vast amount of dealings upon the Stock Exchange through the medium of brokers." (322).

The failure of Overend, Gurney & Co. gave rise to a series of cases in which every attack which the ingenuity of the leaders of the English bar could suggest, was vigorously pressed. There were earnest discussions and differences in the law courts and in the chancery division, but no word of hint or criticism came from the bench or bar that because the Exchange was "an absolutely close market and no person who is not a member can enter its walls, the only access of the outside public being through a broker," (Stutfield & Cantley, London Stock Exchange, 22, 27; Melsheimer, Stock Exchange, 5), or for any other reason, its rules were in restraint of trade (reasonably or unreasonably), or the body itself a monoply.

Grissell v. Bristowe, L. R., 3 C. P., 112; S. C., L. R., 4 C. P., 36, 49;

Coles v. Bristowe, L. R., 4 Ch. App., 3;

Maxted v. Paine, L. R., 4 Ex., 203; S. C., L. R., 6 Ex., 132;

Nickalls v. Merry, L. R., 7 H. L., 530.

In *ex parte Ward*, 20 Ch. Div., 356, a learnedly constituted court construed the two rules by which members alone were recognized in dealings had on

'Change, and prohibiting a resort to the courts by one member against another to determine disputed matters between them, without the consent of the defendant or of the Governing Committee. (Melsheimer, Stock Exchange, 78, 79).

In Seymour v. Bridge, 14 Q. B. D., 460, 465, (also by FRY, L. J., in Smith v. Reynolds, 66 L. T. Rep., N. S., 808, 810), it was said that the rule that none but members will be recognized by the Exchange "is so binding that the consequence to the brokers (of a violation) would be their expulsion from the Exchange as defaulters, or their being made liable by a summary order of the Committee, in case they did not fulfill the contract they had entered into."

In Davis v. Howard, 24 Q. B. Div., 691, a rule by which a broker was authorized to close out his principal's account on non-payment of the balance due was adjudged to be reasonable.

RULES OF THE LONDON STOCK EXCHANGE.

At this point it is interesting to examine the rules thus declared not to be "deserving of any animadversion whatever;" to "be judicious and business-like;" and to constitute "an honorary agreement" binding on the members, whose existence was "a great matter" to the public. (Tompkins v. Saffery, L. R., 3 App. Cas., 220, 227, 228, 232, 238). They are set out in full on pages 849 to 894 of Dos Passos on Stock Exchanges.

The privileges of the Exchange *are strictly limited* to members and their authorized clerks. (p. 264.)

Members may be suspended or expelled for violating any of the rules, for failing to comply with any of the governing committee's decisions, and for dishonorable or disgraceful conduct. (Rule 16, p. 853.) Public notice of such suspension or expulsion may be given and no right of action shall accrue by reason thereof. (Rule 17, p. 853.)

"No applicant is admissible if he be engaged as principal or clerk *in any business other than of the Stock Exchange* (a clause which a learned American Court has declared to be free from legal objection, 136 N. Y., at 341), or *if his wife be engaged in business*, or if he be *a member of, or subscriber to, any other institution where dealing in stock or shares are carried on;* and if, subsequently to his admission, he shall render himself subject to either of these objections, he shall thereby cease to be a member" (Rule 28, p. 855); and the printed form of application for membership requires a declaration to the same effect. (pp. 858, 859.)

"No member shall be allowed to *enter into partnership with any person who is not a member.*" (Rule 39, p. 861.)

"The Stock Exchange does not recognize in its dealings *any other parties than its own members.*" (Rule 51, p. 865.)

"If a member shall do a *private bargain*, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being concealed from the firm, both members shall be expelled. If any member or authorized clerk shall do a bargain, either for money or time, with an authorized or unauthorized clerk, for account of such clerk, they shall be liable to expulsion." (Rule 54, 55, p. 866.)

All disputes concerning dealings *must* be arbitrated. (Rule 63, p. 867.)

The manner of making contracts and of closing them is elaborately sketched. (Rules 66, 142, pp. 868, 887.)

"Bonds will not be admitted to quotation until they have been approved by the committee" (p. 883), nor shares of a new company. (Rules 129, 130, p. 884.)

It has been ruled that a contract for the sale of bonds may be rescinded on proof that they have not been admitted under these rules, for the reason that

unless so admitted they are not a *marketable commodity.*

Young v. Cole, 3 Bing. N. C., 724 (1837).

And procuring securities to be listed by the Exchange by means of fraudulent representations to the proper committee has been adjudged to be *an indictable offense.*

Reg. v. Aspinall, 1 Q. B. D., 730; affirmed, 2 Q. B. D., 48.

In this case the learned justices composing the Court of Appeal each took judicial notice that the action of an Exchange in admitting or excluding property desired to be sold under its auspices and the protection of its rules *greatly affected its value.* And yet no one, judge or counsel, supposed that *a refusal to admit such property* would be in restraint of trade, or that the rule requiring such admission tended to a monopoly.

Reg. v. Aspinall, 2 Q. B. D., 48, 61, 62, 63, 64.

There is an additional rule, which was probably the forerunner of the provisions in the codes of the American Exchanges concerning solicitors, prepaid telegrams, and the like, to the effect that "members of the Stock Exchange are not allowed *to advertise for business purposes* or to issue circulars to persons *other than their own principals.*" (Melsheimer, Stock Exchange, 7.)

The English reports disclose that Stock Exchanges also exist at the following cities:

LIVERPOOL:

Stewart v. Cauty, 8 M. & W., 160, (1841);
Bayliffe v. Butterworth, 1 Ex., 425, (1847);
McEwen v. Woods, 11 Q. B., 13, (1847).

MANCHESTER (where "there was a vast quantity of business transacted"):

Fletcher v. Marshall, 15 M. & W., 755, (1845).

HULL:

Bowlby v. Bell, 3 C. B., 248, (1846).

LEEDS:

Pollock v. Stables, 12 Q. B., 765, (1848).

It was stated by Lord BLACKBURN, in Speight v. Gaunt, L. R., 9 App. Cos., at 21, that the rules of these several bodies are substantially like those of the parent Exchange at London.

THE NEW YORK STOCK EXCHANGE.

The cases concerning the New York Stock Exchange are very numerous and the phraseology of its rules bears a closer resemblance to those of the Exchange in question, embodying, as they do, the machinery for transacting business in this country.

Indeed, this Court, in recognition of the great volume of business which is done through the various Exchanges in the State of New York, and because of the great consideration which has been given by the courts of that State to the questions arising out of the operations of such associations, has expressed a decided disposition to follow the cases there decided.

Galigher v. Jones, 129 U. S., 193, 202.

The earliest case on the subject has become the leading one in American jurisprudence. The plaintiff sought to enjoin a suspension from membership which had been pronounced against him for non-compliance with an award of the arbitration committee. The right to transact business on the floor of the Exchange was exceedingly valuable and *was strictly limited to members.* The court, after defining an Exchange as heretofore quoted and warmly commending its purposes, held that membership therein was merely *a matter of contract;* that it could be conferred and withheld at pleasure; that when granted it was conditional upon compliance with the rules and ceased when a violation thereof had been adjudged by the tribunal designated by such rules.

"It follows from the very nature of such an organization that there must be rules and regulations for the order of the association, which rules should be held *to*

be conclusive as to the mode of transacting business between the members, and as to the privileges *of admission to and continued enjoyment of membership.* * * * * *No person is entitled to membership unless properly admitted.* Each member should stand by his contract. Each member is under an obligation to support it himself, *in all its details*, and is under a duty to see that it is supported by others. * * * *The very existence of this body depends upon the faithful observance of its organic law by all of its members.* * * He can not invoke the aid of this court to protect him in all the rights and advantages of the association, which he alleges are *a great source of benefit to him*, and still be allowed to disregard his duties under the constitution and the laws of the board. * * * The constitution must be taken *as a whole.* The contracting parties *as an entirety.* (To the same effect, *Ex parte* Grant, 13 Ch. Div., at 679). *All its obligations* are to be assumed and discharged; all its benefits are to be enjoyed. *The enjoyment of the latter depends upon the performance of the former. Were it otherwise the association would be of no real advantage to its members.* * * Good faith in the observance of the contractual obligations of the members was intended to furnish a test for the continued right of membership."

White v. Brownell, 2 Daly, 329, 337, 338, 341, 342; also, 3 Abb. Pr., N. S., 318.

On appeal these rulings were affirmed (2 Daly, 343; also, 4 Abb. Prac., N. S., 162), an exhaustive opinion being delivered by the learned Judge DALY, the conclusion of which was that "the law cannot compel such an organization to admit an individual to membership, nor can it interfere to restore a member who has been deprived of the privilege for not complying with the conditions upon which the enjoyment of it was made to depend" (2 Daly, at 358).

Even though it was not decided by the Court of Appeals, this case has become a leading one, and

it is universally cited and recognized as a correct exposition of the law. (Greer v. Stoller, 77 Fed. Rep., 1, 8, and cas. cit.; Haight v. Dickerman, 19 N. Y. Supp., 559, 560.) And it was substantially adopted in the subsequent litigation to which it gave rise. It was there held that an agreement on the part of the principal of that suspended member to indemnify him in the premises was supported by *a lawful* consideration.

White v. Baxter, 9 Jones & S., 359; affirmed, 71 N. Y., 254.

To the same effect,

Harker v. Edwards, 57 L. J., Q. B., 147.

It is an important consideration that each of the multitude of cases supporting the propositions announced in White v. Brownell, *supra*, by necessary implication, adjudges *the lawfulness of the organization* in question. Otherwise, upon what principle treat membership as *valuable*, and consequently not as evidence of participation in a criminal conspiracy, as is done in the cases arising under illegal trust combinations? Why is membership held to be a matter of contract, and the right adjudged to withhold the same? Why declare the constating instruments to embody a valid contract?

These considerations, in view of the nature of the litigation under review, of the magnitude of the interests involved, the publicity of the rules of the organizations in question, and of their intimate connection with and powerful influence upon every branch of business, however negative in their character they may be said to be, are strong authorities to warrant the conclusions we state. As Lord Chancellor HERSCHELL well said in a recent case, "If the law be otherwise, the number of cases must have been almost innumerable in which the contrary would have been contended for and held."

Chartered Institute v. Lockwood, 1894, App. Cas., 347; 6 Reports, 219, 229;

Canning v. Farquhar, 16 Q. B. Div., 727, 731; Stephens v. Southern Pac. R. Co., 109 Cali., 86, 95.

The assertion of the complainant that the cases commending such bodies, and approving their rules, were all decided *prior* to the enactment of Anti-Trust statutes, so-called, is not borne out by the facts. As already shown, the rulings of the Interstate Commerce Commission, reported to and acquiesced in by Congress, and, indeed, the affirmative action of Congressional committees on numerous occasions, have been as commendatory of Exchanges since 1890 as they had been in previous years. A number of the cases cited have been decided since the Congressional Act of 1890 was passed, and similar statutes had long existed in many of the States (notably in New York and Illinois,) whose courts have considered the status of Exchanges and the validity of their rules.

This court has given such bodies recognition as lawful and beneficial in at least *four cases* decided since July 2, 1890.

The General Assembly of New York has repeatedly declared its estimate of these bodies and of their functions in respect of the trade of that great commercial community. Thus by an act approved April 19, 1862 (N. Y. Laws, 1862, chapter 359), a corporation was specially chartered "to provide and regulate a suitable room or rooms for a Produce Exchange in the city of New York, *to inculcate just and equitable principles in trade, to establish and maintain uniformity in commercial usages*, to acquire, preserve, and disseminate valuable business information and to adjust controversies and misunderstandings between persons engaged in business," (§3), and it was provided that awards made by its committees should form the basis of a conclusive judgment of the Supreme Court of that State (§ 7). By an act of February 13, 1868, (New York Laws, 1868, chapter 30), the name of the

former corporation was changed to its present one: New York Produce Exchange.

The preamble to the rules of that body is fully set forth in Hurst v. Produce Exchange, as reported in 3 N. E. Rep., 42, 45, 48, and the effect of an award under its rules was considered in Sonneborn v. Lavarello, 2 Hun, 201.

In a very recent New York case decided upon the subject (1896), it was said, referring to Exchange thus chartered, that "the purpose of the organization is a *laudable one*."

In re Haebler, 149 N. Y., 414, 425.

In Grocers' Bank v. Murphy, 60 How. Pr., 426, Judge VAN BRUNT, after describing the aims and purposes of the New York Stock Exchange, said that "by reason of this aggregation of men engaged in a particular business, and by reason of *the facilities and securities which this combination affords to its members*, the privilege of forming one of this association becomes valuable." (430.)

And in Londheim v. White, 67 How. Pr., 467, 473, its rules were said to be "*reasonable*."

In Commercial Telegraph Company v. Smith, 47 Hun, 494, 505, the status of the New York Stock Exchange was thus defined: "It is just as much *a master of its own business and of the methods of conducting the same* as any private individual within the State."

In Belton v. Hatch, 109 N. Y., 593, 596, 598, it was said of the same body that "its principal object is the promotion of the convenience of its members by furnishing facilities which aid them in doing their business and are, therefore, of benefit to them," and that it constituted a "*business club*." After stating that by wise and successful management, and the acquisition of valuable facilities for the transaction of business, membership therein had become exceedingly valuable, it was further said: "It is fair to presume that this prosperity and success were, in an important degree, due to

the regulations adopted looking to the conduct, by a member, of his business and the restraints imposed *upon reckless or dishonest methods.*"

This Court, in considering a membership in that body, referred to the rules governing such membership, and said that they "*are not open to the objection on the grounds of public policy.*"

Sparhawk v. Yerkes, 142 U. S., 1, 12, (1891).

And a learned judge declared that the good will of that Exchange was attributable to "*a long and honorable career, and the high character of its members.*"

Wilson v. Commercial Tel. Co., 3 N. Y. Supp., 633, 635; 18 N. Y. State Rep., 178.

In the June, 1897, number of LAW NOTES, (p. 35), published by the Edward Thompson Company, appears this account of an exceedingly pertinent case:

TAXATION OF STOCK EXCHANGE SEAT.—William S. Brigham, a New York stock broker, when proceedings were recently instituted in the Supreme Court of that city to compel him, as a non-resident, *to pay taxes upon his membership in the Stock Exchange*, as being *property invested by him in his business*, contended that the value of his "seat" in the Exchange did not represent money invested in his business. Justice BEEKMAN decided adversely to this view, and directed that an order issue for the payment of this tax. "The right to trade upon the Stock Exchange," Justice BEEKMAN said, "is *highly important, if not absolutely essential, to the conduct of the business of buying and selling stocks and bonds, as the market is controlled by the Exchange, and access to it is confined to its members.* How highly the privilege is valued from a business point of view is shown by large sums which brokers are willing to pay for it. It is part of *the plant or machinery*, so to speak, *through which the business is done.*"

See also,

McCabe v. Emmons, 51 N. Y. Superior, 219;

Weston v. Ives, 97 N. Y., 222, (a suspension for

doing business in a reckless and unbusiness-like manner);

Kuehnemundt v. Smith, 2 N. Y. Supp., 625; 17 N. Y. State Rep., 757, (an expulsion for fraudulent conduct).

Origin and Rules of the New York Stock Exchange.

The New York Stock Exchange had its origin in an agreement, dated May 17, 1792, partially set out in Don Passos on Stock Exchanges (9), and in full in a very valuable history of American Exchanges, published by Messrs. O. W. Clapp & Co. in 1894, as follows:

"We, the subscribers, brokers for the purchase and sale of public stocks, do hereby solemnly promise and pledge ourselves to each other that *we will not buy or sell from this day, for any person whatsoever, any kind of public stock at a less rate than ¼ per cent commission* on the specie value, and that we will give *a preference to each other in our negotiations.*" (Clapp, 239.)

In a general way the constitution and by-laws now prevailing are stated to "set forth the manner in which business shall be conducted, *the rates of commission to be charged*, and the acts or omissions which constitute a ground for dismissing a member." (Dos Passos, pp. 12, 13.) It is also stated that "*a uniform rate of commission is fixed* which is generally observed," and the minimum rates prescribed are set forth. (Dos Passos, p. 232, note 2.)

The constitution and rules are set out in full on pages 809–845 of the treatise last referred to, some of which deserve to be noticed as being the model upon which all other American Exchanges are formed, and because of their similarity to the regulations which the Court is asked to condemn in the present case.

As the members of that Exchange sell property belonging to non-residents and persons residing in other States, oftentimes for delivery there, even in its "original package;" as the telegraph is used in their transactions; as, oftentimes, solicitors are sent to and advertisements published in other States of the Union; as drafts drawn by or on persons or books in such other States form a conspicuous feature of their transactions; and as their negotiations are many times partly in one State and partly in another, and concern property then situate in a different State, that body is quite as much engaged in interstate commerce as are these defendants. Indeed, the same may be said of nearly all Exchanges. It needs but a glance at the location of the given city and the nature of the business done to demonstrate this conclusion: Witness, the Chicago grain trade described in Munn v. Illinois, 94 U. S., 113, 130, 131, and the business done by the members of the Chicago Live Stock Exchange set out in American etc. Commission Co. v. Chicago etc. Exchange, 143 Ill., 210, 212, 213, 226.

The affairs of the New York Stock Exchange are controlled by a Governing Committee (Art. II., p. 809), which is given *supreme power*. (Art. III., p. 810.)

Members are admitted at the will of a committee on Admissions. (p. 812.)

All securities must be approved and ordered listed by an appropriate committee before members are permitted to deal in them. (pp. 812, 813; Art. III., IV., p. 829.)

A committee on Commissions is provided for, "whose duty it should be to see that *the rules relating to commissions are complied with*, and report to the Governing Committee any violation thereof." (p. 814.) The latter committee has power to try all offenses and "their decision shall be final." (Art. III., section 1, p. 840.) Article XVIII. is devoted to the subject of *commissions*, section 1 of which provides that "com-

missions shall be charged and paid, *under all circumstances*, both upon the purchase and sale of stocks, bonds, and other securities, either for members of the Exchange or for other parties," and the *minimum rates* are set forth in detail. (pp. 821, 822.)

These rules have been construed to require a commission to be charged to *each party* on an exchange of or "turn" in stocks (p. 821, note), which is also the practice on the London Stock Exchange, a practice to which the Royal Commission of 1877 reported "*it is hardly possible to object.*" (p. 255, note.)

The New York rule has also been construed in such a way as to forbid any *evasion* of its terms and the making of exceptions from its requirements, by way of *rebate, bonus or otherwise.* (p. 822, note.) It is also provided that "any member violating this article, directly or indirectly, shall, upon conviction, *cease to be a member*, and his membership shall *forthwith be disposed of* by the Committee of Admissions." "Any member who shall be convicted of *offering* to do business for less than the foregoing rates" shall be deemed to have violated the rule. (p. 823.)

A "discrimination" is provided for, in that non-members must be charged *one-eighth* of one per cent., while fellow-members may be served for *one thirty-second* of one per cent., and, under certain circumstances, for as little as *one-fiftieth* of such per cent. (821, 822.)

In 1889 the initiation fee was fixed at $20,000 (Art. X., Section 2, p. 816), and every member was required to sign a pledge "to abide by all then existing or subsequent enacted rules, by-laws or regulations." (Art. XXI., p. 823.)

Every member is obliged to keep a prescribed place of business and to notify the Exchange of any partnerships entered into by him and of all dissolutions (Art. XII., p. 817), and is prohibited from forming *a partnership with a suspended member, an insolvent person, or a former member who has not fully adjusted all claims held*

against him by members of the Exchange. (Section 5, p. 820.)

Members guilty of obvious fraud shall be expelled (Art. XX., p. 823), and for any violation of the rules, shall be subject to such penalty, including suspension or expulsion, as the governing committee may see fit to impose. (Section 2, p. 824.)

Art. XXII. provides that "any member who shall himself, or whose partner or partners shall, *apply for an injunction* or legal instrument restraining an officer or committee of the Exchange from performing his or its duties under the Constitution and By-Laws shall *by that act* cease to be a member of the association." (p. 824.)

Dealings are limited *to the interval between certain prescribed hours*, and transactions in any public place outside of the Exchange are likewise prohibited. (Section 1, p. 828.) The manner of transacting business is prescribed in great detail, (pp. 828, 837).

By-Law XIX. provides that "any member *uniting*, directly or by a partner, *with any organization where stock, bonds, etc., are dealt in*, shall cease to be a member of this Exchange" (p. 837), and also that "any member dealing *with a person not a member*, in the rooms of the Exchange, shall be subject to suspension." (p. 838.)

Any member failing to pay fines within the times limited shall stand suspended or cease to be a member. (Art. XX., p. 838.)

No persons except members are permitted to have access to the minutes. (Art. XXV., p. 840.)

Members are required to submit claims to the Arbitration committee even *at the request of a non-member.* (p. 813, and Art. XXVIII., p. 841.)

Instead of these regulations operating in *restraint of trade*, the records show that in 1886 the sales on that Exchange reached the enormous aggregate of $6,506,087,614! Even during the depression which

made the year 1894 so sadly memorable, they aggregated $3,404,897,951! (Clapp, 239). And it has very recently been stated that "the Stock Exchange is *certainly the heart of the business life of New York*. There are Stock Exchanges *in every large city in the world*, and a generic likeness pervades them." (CENTURY MAGAZINE, February, 1897, p. 503, Vol. 53.)

It now embraces, by merger and consolidation, the members of a number of stock boards which had been formed in New York from time to time. (Clapp, 15.) *Membership is limited to 1,100 persons* (Clapp, 15), and the judicial annals disclose that such memberships have sold for as much as $33,000 and $34,000! (London Agency Co. v. Morphy, 12 Am. and Eng. Corp. Cas., 53, 70; Sparhawk v. Yerkes, 142 U. S., 1, 4; Platt v. Jones, 96 N. Y., 24, 29.)

Assuming $35,000 to be the present value, it will be observed that the value of the 1,100 memberships in that body alone represents an aggregate of $38,500,000, which would not only be rendered valueless, but also made to represent participation in a criminal conspiracy, if the present action is well taken. There is no objection to the Exchange under review that does not apply, with ten-fold force, to the New York Stock Exchange. It is important to remember, as already noted, that the State of New York has long had a statute prohibiting contracts, combinations and conspiracies, intended and having the effect to injure trade, which have been construed to include all arrangements in restraint of trade, some of which were unobjectionable under common law rules, and which have been vigorously enforced by the courts of that State. (See some of the cases digested by Judge SANBORN, 58 Fed. Rep., at 70.) The same courts, as shown by the quotations already made, have commended Exchanges in the highest terms and declared that their evolution was due to the *demands* of *business development*, and their usefulness to a "*long and honorable career and the high standing of its members;*" that their

purpose was "a laudable one" and their rules "not open to objection on the score of public policy."

STOCK EXCHANGES EXIST ALSO IN BOSTON, PHILADELPHIA, CHICAGO, SAN FRANCISCO, TORONTO, AND MONTREAL.

1. The BOSTON STOCK EXCHANGE was organized in 1834; membership is limited to 150, and quoted to be worth about $12,500. (Clapp, 259.) Its rules have been judicially declared to embody "an *appropriate means* for the quick and economic transaction of large volumes of business."

Dillaway v. Alden, 88 Me., 230, 236.

2. The PHILADELPHIA BOARD OF STOCK BROKERS came into existence early in the century and its rules furnished the model for those of the present New York Stock Exchange. (Dos Passos, p. 9.) It, well as the San Francisco Exchange, hereafter noticed, are both *unincorporated associations.* (Dos Passos, p. 12 *n.* p. 1.) A summary of the rules of the Philadelphia body is to be found in a case which ranks next to White v. Brownell, 2 Daly, 329, in this branch of the law, fixing, as it does, the limitation upon the power of such bodies to discipline their members. It was there pointed out that the rules of the Philadelphia Stock Exchange authorized the suspension of members for failing to make good loans from members, or an overdraft at a bank; for purchasing or selling stocks for a minor or clerk without the consent of the parent, guardian or employer; for advertising certain loans, stocks or bonds for sale; "*for doing business for a less commission than the rates provided for;*" for attending any other room than the Exchange for the purpose of buying or selling stock; and for indecorous language or conduct to members in or the board itself while in the board room.

Leech v. Harris, 2 Brewst., 571, 576, 577, 589.

These rules have been judicially declared to be "*a law as to the members.*"

Thompson v. Adams, 93 Pa. St., 55, 66;
Pancoast v. Gowen, 93 Pa. St., 66, 71.

The rule that the proceeds of the sale of a membership were primarily chargeable with the payment of damands due to members was declared to be valid in Singerly v. Johnson, 3 W. N. C., 541; Leech v. Leech, 3 W. N. C., 542, *note;* and Moxey v. Stock Exchange, 14 Phila., 185; affirmed 9 W. N. C., 441.

A suspension for non-payment of assessment was upheld in MacDowell v. Ackley, 8 W. N. C., 464, the court saying (467) that no person could enjoy the benefits of an Exchange membership with performing his obligations under the rules.

The record of sales kept by its clerks are competent to prove the value of an article on a given day.

Esser v. Linderman, 71 Pa. St., 76, 79.

That body had 230 members in 1894 (Clapp, 333), and membership therein has been recognized to be worth $8,000.

Sparhawk v. Yerkes, 142 U. S., 1, 4.

The Stock Exchange is quartered in the Philadelphia Bourse, a building costing $1,350,000. (Clapp, 265.)

3. The CHICAGO STOCK EXCHANGE is the outgrowth of several similar organizations dating back to 1864, and an unincorporated body. Its membership is limited to 445, and seats have a value of $1,500 each. (Clapp, 261.)

4. The SAN FRANCISCO STOCK AND EXCHANGE BOARD was organized in 1862. Its Constitution and By-laws (revision of 1892) contain the following provisions:

Membership is *limited* to 100. (Art. II.)

"No member of the Board *shall belong to any similar organization* in this State under penalty of immediate expulsion." (Art. XI.)

Rates of commission shall be regulated by the By-laws. (Art. XVII.)

No stocks or bonds shall be called unless first approved and listed (By-law 2), for which certain fees are charged. (By-law 3.)

"No assembly of members outside the Board-rooms, for the transaction of stock business, shall at any time be allowed." (By-law 9.)

"No member shall transact any business in mining stocks, as a stock broker," *for less than the rates of commission fixed.* "Nor shall any member be permitted to evade this By-law, by means of *any rebate, deduction, or allowance.*" For the first violation, a fine of $5,000 shall be imposed and the offender shall stand suspended until the same is paid. For the second offense, an additional penalty of thirty days' suspension is provided for. (By-law 25.)

"*No member shall employ, directly or indirectly, a non-member* to buy and sell mining stocks dealt in at the Board, under a penalty of $1,000 for each offense." (By-law 29.)

Notice of defaults by members is publicly given. (By-law 35.)

Non-members may compel members to submit matters to arbitration. (By-law 36.)

A member against whom an award is made shall stand suspended until he has complied with the same. (By-law 37.)

No member shall employ or have a partner or employee in any capacity whatever, a member, or the clerk of a member, of *any similar organization.* The names of all partners must be reported to the President. (By-law 38.)

All clerks and employees must be registered. Dealings with clerks or employees must be reported to the employer. Clerks shall not be allowed to trade on the floors of the Board. (By-law 39.)

"The bids or offers for the purchase or sale of shares of stock shall, during all regular and informal

sessions of the Board, be *exclusively confined to members thereof.*" (By-law 42.)

It has been judicially said the rules of this body "are essentially the same as those of other Stock and Produce Exchanges in New York and other cities of the Union," (Habenicht v. Lissack, 78 Cal., 351, 352), and that all Exchanges "seem to have been framed upon the same model." (Lowenberg v. Greenbaum, 99 Cal., 399.)

Judge SAWYER ruled: "*I find nothing in the organization, constitution or by-laws of this organization in contravention of the law of the land.*" (Hyde v. Woods, 2 Sawy., 655, 656, 659, 660; affirmed, 94 U. S., 593.)

Membership has been found to be worth $6,000, as long ago as 1885 (Clute v. Loveland, 68 Cali., 254, 258), and adjudged to be conditional upon continued compliance with the rules of the Exchange. (Rorke v. San Francisco Stock Board, 99 Cali., 196.) The by-laws and rules of such an association "bear the same relation to the association as do charters by the legislature to private corporations." (Levy v. Magnolia Lodge, 110 Cali., 297, 310.)

5. Stock Exchanges exist also in Toronto, (Agency Co. v. Morphy, 10 Ont. Q. B., 86; 12 Am. & Eng. Corp. Cas., 53, 63, 65; affirmed, 14 Ont. App., 577; 21 Am. & Eng. Corp. Cas., 371), and in Montreal, the latter having originated in 1822, and having, in 1894, a membership of 1,000, and owning a magnificent building (Clapp, 331), costing over $600,000. (See Annual Report, Montreal, 1896, p. 62.) The Birmingham Stock Exchange came under notice in Terry v. Birmingham Bank, 99 Ala., 566.

RULES OF THE PARIS BOURSE.

6. Before passing from this sketch of Stock Exchanges, the history and rules of the PARIS BOURSE deserve brief notice, as it is the most important body of that nature existing in continental Europe. It was

organized as early as 1304, (Dos Passos, 324.) In 1723 stock dealings *at any other place* were forbidden under heavy penalties. (325.)

It was closed by a decree of the French Revolution. And it merits serious consideration that *this is the only act unfriendly to such bodies which history records*; and it can hardly be supposed that the spirit which permeated the French Revolution actuated an *American Congress* in the enactment of the statute under consideration and *President Harrison* in affixing his signature thereto. On the contrary, it is to be presumed that Congress intended that "which best comports with the genius of *our* institutions." (Texas & Pac. Ry. v. Commission, 162 U. S., at 218.) Such an intention on the part of Congress is likewise rebutted by the historical fact that even the revolutionary suppression of the Paris Bourse "was of but *short* duration, for by a decree of the *very same year* it was re-established." (Dos Passos, 326.)

The State furnished the ground for a building, and the City of Paris paid the cost of the structure, amounting to 8,000,000 francs, over $1,500,000 of our money. Napoleon himself laid the corner-stone. (326.)

The present rules were framed in 1816 and are set out in Dos Passos. (pp. 897-944.)

Membership is *limited to sixty* and has not since been increased. (327, 328.) "They are generally men of large capital, doing a most extensive and valuable business." (321.)

All efforts to interfere with their business, however strongly supported and vigorously urged, have been *suppressed by the courts*. (334, 335.)

The governing committee fixes the *minimum commissions* which are to be charged. (335, 336.) The table in existence in 1877 is set out on pages 943, 944.

Members must possess certain prescribed qualifications. (Ch. I., p. 898).

The Syndical Chamber has supreme and final

authority in all disputes and contests that may arise between members. (Art. 20, p. 902.)

No member is allowed to employ more than two head-clerks. (Art. 59-64, pp. 908, 909.)

Members cannot form partnerships between themselves (Art. 67, p. 910); nor transact business with any employee of a fellow-member; nor *share their commissions with any one.* (Art. 69, 70, p. 910.)

"The Syndical Chamber annually fixes the *minimum commissions.* * * The tariff of commissions is sent to every member and *all are bound to comply with it.*" (p. 911.)

No member can begin or carry on *an action at law* without the previous consent of the Syndical Chamber (Art. 76, p. 911), nor have his offices in a building already occupied by a fellow-member. (Art. 77, p. 911.)

On suspension, a member is prohibited *from entering the Exchange.* (Art. 79, p. 911.)

No security can be sold without having first been approved and listed by the Syndicate Chamber. (Art. 155, *et seq.*, pp. 926 *et seq.*)

In 1881, it was stated that "a broker's seat (in this body) is worth from a million and a half to two million francs and cannot be sold without the consent of the Governing Committee."

Lewis, Stocks etc., p. 12.

Produce Exchanges.

The four most important of the Exchanges in this country which are devoted to dealings in grain and other similar products are the Chicago Board of Trade, the New York Produce Exchange, the St. Louis Merchants' Exchange, and the Kansas City Board of Trade, the rules of which are, in the respects now under consideration, of the same general nature as those of the American Stock Exchanges already noticed, and,

in all essential features, the same in each of the bodies.

Chicago Board of Trade.

The Chicago Board of Trade was organized in 1848 and incorporated in 1859, for "the *promotion of trade*" (20 Ill. App., at 324, 325). It owns a building which cost $1,840,000. It has about 1,900 members and the initiation fee is $10,000. (Clapp, 301.)

Its rules and regulations are set out in an Appendix to Bisbee & Simonds on Produce Exchanges, pp. 303–358. That treatise was published in 1884; so that the rules in question were public to the world *at least six years* prior to the passage of the Act of Congress of July 2, 1890. In point of fact, the rules of all the bodies referred to in this compilation have ever been accessible to the public and a matter of notoriety; witness the many quotations from them in the various judicial decisions herein cited.

The Chicago Board of Trade is governed by a board of directors (Bisbee & Simonds, 303, 306,) which has power to suspend or expel a member for failing to comply promptly with the terms of any business contract or obligation, or with an award of the arbitration committe; for improper conduct of a personal character in the rooms of the association; for wilfully violating any business contract or obligation; for violating any of the rules, regulations and by-laws of the Exchange; for making or reporting any false or fictitious purchases; andfor any other dishonorable or dishonest conduct. (308,309.)

Sections 7 and 8 of Rule IV. of the Kansas City Live Stock Exchange (Record, 31, 32) are practically transcripts of these provisions.

Rumors or other information ofa grave offense against the good name and dignity of the Exchange are required to be promptly investigated, and, if well founded, steps taken to prosecute the offending member.

(Chicago, Bisbee & S., section 15, pp. 310, 311; K. C. Live Stock, Rule IV., section 13, Record, 35).

In all hearings before the Arbitration Committee, the rules are to be construed "as being designed to secure *justice and equity in trade*." (Chicago, 319, Kansas City, Rule VII., section 1, Record, 37).

Membership is at the will of the Board of Directors. (323.)

Visitors are not permitted to negotiate or transact any business in the Exchange rooms. Rule XIII., p. 323.)

By sections 3 and 4, Rule XV., the "*established minimum rates of commission governing members of the association*," are prescribed. (325, 328.) "*No rebate, drawback, division of commissions, or any other allowance, directly or indirectly, shall be permitted or excused.*" (328.) No member is permitted to do business for a non-member on a salary. (328.) "Any violation or evasion of this rule shall be deemed and held to be an act of bad faith and conduct of so *dishonorable a character* as to render a member guilty thereof to the *severest discipline* authorized by the rules of the Board of Trade." (328.) For the first offense, the punishment is suspension or expulsion, and for the second the Board of Directors *must* expel him. "The name of the party so convicted shall be posted on the bulletin of the Exchange." (329.) A reward of $500 may be paid for proof of such violation. (329.)

Rule XX. fixes the places and hours for trading, "it being the object and intent of this rule that *all such trading* which may tend to the maintenance of a public market" *shall be thus confined.* (331.)

The regulations for trading are framed in great detail. (332–352.)

These rules have been many times before the courts of Illinois, Federal and State, and there is no hint or suggestion of their illegality in any of the cases.

In Roundtree v. Smith, 108 U. S., 269, (1883), the plaintiffs were awarded judgment for *the commissions prescribed by these rules.* So, too, in many other cases herein cited, the latest being Hansen v. Boyd, 161 U. S., 397. In Nelson v. Board of Trade, 58 Ill. App., 399, 412, the right of this body to prescribe regulations concerning warehouse receipts to be recognized by its members, being the same in principle as the admission of securities by Stock Exchanges, was recognized.

The Enforcement of Rules Requiring Honorable Conduct.

It is noteworthy, in these days of carping doubt as to the good faith of the purposes of parties as declared by themselves, in the way of preamble or otherwise, that the most bitterly contested cases involving these rules arose out of suspensions or expulsions for dishonorable conduct, *without regard to whether the party injured was a member of the body or not.*

The preamble of the Chicago Board of Trade is set out in the Sutherland case, 6 Biss., 526, and was substantially adopted by the defendant Exchange. In a series of cases the lawfulness of the organization was not only assumed, but effect was given to the discipline it visited upon members guilty of dishonorable conduct, such as keeping accounts so as to defraud clients, and failing to perform business engagements.

People v. Board of Trade, 45 Ill., 112, 115, 116;
Fisher v. Board of Trade, 80 Ill., 85;
Baxter v. Board of Trade, 83 Ill., 146;
Sturges v. Board of Trade, 86 Ill., 441;
Pitcher v. Board of Trade, 121 Ill., 412, 419, 420.

It was of this organization that a learned Federal judge declared, after an exhaustive examination, that it "unkertakes to exercise a salutary control over its members" and that its members were "a fraternity of *commercial gentlemen*" by whom irregular or disreputable

dealers were justly treated as are "*shysters*" in the legal profession.

Clarke v. Foss, 7 Biss., 540, 555.

This conclusion was fully affirmed by Judge DRUMMOND in an unreported opinion, noticed in Ward v. Vosburgh, 31 Fed. Rep., 12, 15.

In the most recent Illinois case on the subject, 1896, a leading member of the Board, whose name is given as one of its charter members, (Clapp, 303), was expelled for failing to perform a contract he had made as an officer of another corporation, under the rule authorizing such punishment for an act of bad faith or dishonorable conduct. The court upheld the expulsion, saying: "The right to pursue a business as a member of such an organization in the hall of the building devoted to that purpose may be a thing of value; but its value *is incidental to membership*, and a determination of such membership *destroys the rights under it.* This corporation is not bound to admit any person to membership, nor was the relator in any way forced into such association. He voluntarily became a member, and by his contract *is bound to abide by the rules and regulations of the Board.* The courts will never interfere to control the enforcement of by-laws of such associations; but they will be left to enforce their rules and regulations by such means as they may adopt for their government."

Board of Trade v. Nelson, 162 Ill., 431, 438.

This determination to compel members to be honorable in their dealings has not been confined to the Chicago Board of Trade (Hurst v. Produce Exchange, 100 N. Y., 605). It is shown in the present case that the defendant Exchange has disciplined more members *for improper dealings and for attempts to gain a wrongful advantage over clients*, than for all other causes combined (Record, 179). In People v. New York Commercial Association, 18 Abb. Pr., 271, a member had been expelled for improper practices in trading. He denied the

right of the Exchange to "bind its members to a standard of morality in their dealings with *strangers*"; but the court said that one of the objects of the association being "to inculcate just and equitable principles in trade," and the relator having agreed to the rules of the organization by becoming a member thereof, he stood bound to use honesty and fair dealing in all his trade relations, whether with members or strangers, and that "*it was not an individual matter for a member to violate this agreement, but affected the standing and character of the entire association.*" (279, 280.)

This case has been recently directly affirmed by the New York Court of Appeals in two cases involving a similar question, under the rules of the New York Produce Exchange, the preamble to which is the same as that of this defendant, (see 3 N. E. Rep., 42, 45, 48), and the body of which is substantially the same as that of the Chicago Board of Trade.

People v. Produce Exchange, 149 N. Y., 401;
Ex parte Haebler, 149 N. Y., 414, 425, 428.

The Milwaukee Chamber of Commerce enforced a rule requiring members to keep their engagements "*whether legally binding on them or not*," and its action was approved as being " in line with the purposes of such Exchange to inculcate just and equitable principles in trade."

Dickenson v. Chamber of Commerce, 29 Wis., 45, 50, 50, 51.

The validity of a transaction carried on under the rules of the New Orleans Cotton Exchange coming up, the Supreme Court of Louisiana said of that body: "Amongst its principles as declared in its charter are the following: To establish just and equitable principles, *uniform usages*, rules, and regulations, and standards for classification, which shall govern all transactions connected with the cotton trade, * * * and generally *to promote the interests of the trade, and to*

increase the facilities and the amount of the cotton business of the City of New Orleans."

The suit was to recover *commisions prescribed by the rules of the Exchange*, and also commissions which the plaintiffs had paid out as brokers on behalf of the defendant. The controversy was decided in accordance with the rules of the Exchange, and it was said, answering the suggestion that the rules were intended as an evasion of the law on the subject of illegal contracts, that "the law presumes that the true intent of parties is that which is expressed upon the face of their contracts, and also that men in their business transactions do not intend to violate the law, or to make contracts for the enforcement of which the law refuses a remedy."

Conner v. Robertson, 37 La. An., 814, 818.

PRODUCE EXCHANGES IN OTHER AMERICAN CITIES.

1. The NEW YORK PRODUCE EXCHANGE originated in 1862. Its building cost nearly $3,200,000. Membership is limited to 3,000 and the initiation fee is $10,000. (Clapp, 293.) "The *inspection of grain* in the City of New York is under the control of this Exchange." (Clapp, 295.)

2. The ST. LOUIS MERCHANTS' EXCHANGE was organized in 1862 and is the outgrowth of a body formed in 1836. A building costing $1,800,000 is occupied by it. It has 3,000 members and the initiation fee is $2,500. The inspection of grain in East St. Louis, where most of the elevators are located, is under the control of the Exchange. (Clapp, 337.)

Its rules are substantially the same as those which prevail at Chicago. They provide, among other things, *a schedule of minimum commissions* (Rule IV., Section 12), a circumstance which came under the notice of Judge THOMPSON, in December, 1892, nearly four years after the Missouri Anti-Trust Statute had been enact-

ed, (2 Rev. Stat., 1889, p. 1702), without evoking the slightest criticism.

Warren v. Merchants' Exchange, 52 Mo. App., 157, 167.

So, too, the fact, noted in another case, that "its transactions embrace *nearly all business* in certain lines, especially breadstuffs and provisions."

Eliot v. Merchants' Exchange, 14 Mo. App., 234, 237.

In Goddard v. Merchants' Exchange, 9 Mo. App., 290, it was found that the body had been formed for the purpose of *facilitating business transactions*, and the preamble to the rules is set forth at length (292). It was held that a rule requiring the buyer to pay certain storage charges on grain sold in bulk and represented by elevator receipts, was valid and that, as between members, it had the force of a contract or of positive law and not merely of a custom. (295). That *uniformity was attained thereby conclusively proved it to be reasonable* and not open to objection on the score of public policy. (296).

It was also said that "*nearly all the grain* sold in the St. Louis market *is sold on the floor of the Exchange.*" (292.) Affirmed, 78 Mo., 609.

In Albers v. Merchants Exchange, 39 Mo. App., 583, 590, it was found "that the privilege of meeting other merchants on the floor of the Exchange to trade with them (all but members being rigorously excluded) is a very valuable privilege."

In a case growing out of the previous one, the Supreme Court of Missouri also confirmed the good faith of the preamble to the rules and gave effect to the proposition that "the Exchange is not a corporation organized *for pecuniary profit.* It has no capital stock and pays no dividends."

Albers v. Merchants' Exchange, 39 S. W. Rep., 473, 478 (1897).

3. The KANSAS CITY BOARD OF TRADE was organ-

ized in 1868; it has 200 members, and occupies a building which cost $662,500. (Clapp, 325.) The initiation fee is $1,000. Its rules are substantially the same as those which prevail at Chicago and St. Louis. Among them is a provision to protect its officers against suits (Revised Rules, 1895, p. 50), and *a schedule of minimum commissions.* (p. 56).

The right of this body to appoint inspectors of grain, and the status of owners of private grain warehouses at Kansas City, were the subjects of an elaborate opinion delivered by the Missouri Supreme Court in 1893. The facts of that case disclosed that "said city was one of the chief grain markets of the world; * * * there are shipped daily to said city, and there *sold and bought* and *shipped* from said city, by citizens of this and *other States*,* * large quantities of grain, amounting annually to many millions of bushels (183); * * the evidence tended to show that at least *ninety-five per cent.* of the grain came from *Kansas* and *Nebraska.* * * It found a market in the *Eastern States* and in *Europe*," (190), and the inspection provided, it was said, was intended to and did "*facilitate trade*," (194).

State *ex rel.* Attorney-General v. Smith, 114 Mo., 180.

Similar Exchanges exist practically in every city of importance in the land:

4. In BOSTON, since 1836, with a building costing $500,000; a membership of about 975, worth $350 each; and having charge of the inspection of grain. (Clapp, 315.)

5. In PHILADELPHIA, since 1854, with 490 members, an initiation fee of $1,000, and in charge of the inspection of grain. (Clapp, 333.)

The Philadelphia Corn Exchange was incorporated by a special charter granted January 22, 1861, in the preamble to which the Legislature of Pennsylvania solemnly recited that the objects of the organization "are for *the advancement of the trade and for the improve-*

ment of the facilities for transacting business,"—language hardly apt to describe a combination or conspiracy in *restraint* of trade.

And as recently as January 29, 1896, the retiring president, one of the leading merchants of Philadelphia, *publicly* used language which, if, indeed, he was addressing an association of fellow-criminals, was certainly highly extraordinary:

"The Commercial Exchange has long been *the foremost of the active business organizations of Philadelphia*. It represents in a larger degree than any other of the Trade Exchanges, the wealth and influence of the business of Philadelphia. It is the center of the grain and flour interests of the city and State, and *the success of the branches of business which are its chief concern means the development of the commerce of the port*, which brings Philadelphia into prominence as a factor in *the international trade* of the country, which feeds the traffic of its railroads, and contributes business to its insurance, banking and manufacturing interests.

"The Commercial Exchange has always been *in the van of progressive work for the development of the material interests of Philadelphia* and its influence will always be felt in *that direction*." (42nd Annual Report, Philadelphia Commercial Exchange, 1896, pp. 42, 43.)

If the theory of the complainant in the present case be correct, the conduct of that speaker was nothing short of *brazen effrontery!* For a perusal of the by-laws and rules of that body (set out in the same pamphlet, pp. 99-154), discloses that that organization is subject to all the charges of illegality asserted against the present Exchange. It has a similar preamble; *none but members are entitled to the privileges thereof* (Art. II., XII.); members may be disciplined, suspended or expelled (Art. XXV.); compulsory arbitration of business disputes is prescribed (Art. XVI.), under sanction of an express legislative enactment (see

Act approved April 21, 1870, on page 97 of pamphlet); on non-payment of assessments, members stand suspended (Art. XVII.); *a bulletin is provided for posting* (Art. XX.), on which the names of *suspended or expelled members* are published (Floor Rule VIII., p. 154); the inspection and warehousing of grain is regulated (Rules I. to XIV.); the manner of dealing is prescribed in detail (Rules V. to XVI.); storage charges and *minimum commissions* are fixed by the directors, (p. 150), under the power conferred by Article XXIII.; and visitors are prohibited from transacting business (Floor Rule V., p. 153).

And yet this body "has always been *in the van of progressive work for the development of the material interests of Philadelphia*, and its influence will always be felt in *that direction!*"

The validity of these rules has been declared to be free from doubt.

> Sexton v. Commercial Exchange, 10 Pa. Co. Ct., 607, 610.

This organization was one of the parties complainant, (as were others of a similar character located elsewhere), in the important case of Texas & Pac. Ry. v. Interstate Commerce Commission, 162 U. S., 197, 200, decided as recently as 1896. The Court noticed that these organizations were composed of merchants and traders engaged in business "as *active competitors*" with merchants in other trade-centers (at 215). Mr. Justice HARLAN, speaking for the dissenting minority, likewise referred to their presence in the case, (at 241), and, referring of the argument that *no one but such bodies* had complained of the discrimination in railroad rates then under consideration, said: "But, I may ask whether *the interests represented by these Boards of Trade and Commercial Exchanges are not entitled to consideration?*" (at 252). The railway companies were represented by counsel of national reputation, (203), and if it had been thought that such organizations

were not entitled to appear as complainants *in equity*, *i. e.*, that they were not free *from any taint of illegality*, is it not reasonable to suppose that this would have been included among the points of objection urged against their right to be heard in that case? And if the rules are as to conspiracies laid down in his dissenting opinion in United States v. E. C. Knight Co., 156 U. S., 1, 24–30, and in Arthur v. Oakes, 63 Fed. Rep., 310, had the slightest application to such bodies, would Mr. Justice HARLAN have characterized them as entitled to such high consideration? Would he not have declared them to be *illegal conspiracies with not even the right to exist?*

6. The BALTIMORE CORN AND FLOUR EXCHANGE was organized in 1853; occupies and owns a large interest in a building costing $600,000; has about 550 members; the initiation fee is $250; and it controls the inspection of grain at that city. (Clapp, 313.)

Its rules are, in essential particulars, the same as those of the Chicago Board of Trade. The provisions governing *commissions* are embodied in Article XXV., on page 70 of its Annual Report of 1895.

In Irwin v. Williar, 110 U. S., 499, 501, it was stated that "by and through the members of this Exchange, *substantially all* the business of buying and selling grain at that city was done." (501.)

7. The BUFFALO MERCHANTS' EXCHANGE originated in 1844; has 478 members; and controls the inspection of grain. (Clapp, 317.)

8. The DETROIT BOARD OF TRADE was organized in 1856; has 125 members; and controls the inspection of grain. (Clapp, 321.) Its preamble and rules are practically copies of those prevailing at Chicago, including *the schedule of minimum commissions.* (Revised Rules, 1886, pp. 5–40.)

9. In the annual report of the CLEVELAND CHAMBER OF COMMERCE for 1896, it was stated that a Produce Exchange was in process of

organization and the members of the Chamber concurred that "it is confidently believed that such a board would *promote the extension of Cleveland's grain trade* and that by the application of strict rules of government, individual interests would be greatly benefited" (p. 87), a sentiment indicating a woeful ignorance of the fact that such Exchange, if formed, would subject the promoters to the charge of a criminal offense.

10. The CINCINNATI CHAMBER OF COMMERCE AND MERCHANT'S EXCHANGE was organized in 1839 by 42 persons and now has a membership of nearly 2,000. It owns a building costing $775,000 and controls the inspection of grain and cotton at that market. (Clapp, 319.) That body has also expelled a member for dishonorable business conduct towards a non-member, and its action was sustained on the ground that it had the right to supervise the morals of its members in all mercadtile transactions.

Blumenthal v. Chamber of Commerce, 7 Cin. L. B., 327.

According to the annual report for 1895, its property is now worth over $1,000,000.

11. The TOLEDO PRODUCE EXCHANGE originated in 1849; owns a building costing $150,000; its membership is limited to 100 and the initiation fee is $250. It controls the inspection of grain in that city. (Clapp, 339.)

12. The MILWAUKEE CHAMBER OF COMMERCE was organized in 1858; has about 600 members, whose initiation fee was $500 in 1894 (Clapp, 327), but is now $1,000. (Annual Report, 1896, Rule XII.) The *rates of commission* are precisely the same as those which prevail at Chicago. (Annual Report, 1896, p. 186.) Its preamble is in the same form as that of this defendant. (Annual Report, 1896, Appendix p. vii.) Its members are prohibited from gathering at any place in and about the building for trading purposes, and

allowed to trade *only between given hours.* (Rule XI., section 9.) No person under sentence of suspension or expulsion *by any other similar commercial body* is eligible to membership. (Rule XII., section 5.)

A rule requiring members to perform their engagements, *whether legally binding or not*, has been sustained, the court saying that such a rule "is a perfectly reasonable and proper one and is well calculated *to promote the objects* which such organizations are created to accomplish."

Dickenson v. Chamber of Commerce, 29 Wis., 45, 50, 51.

Referring to this and similar rulings, it is said that, "this broad power would seem essential to the very nature of an organization, having among its objects the enforcement of honorable business principles among its members, together with the furtherance of a high standard of commercial honor and commercial credit in the *community at large.*"

Bisbee & S. Produce Exch., p. 19.

Rule XI., section 9, which prohibits trading at places in the vicinity of the Exchange, was attacked as being *in restraint of trade*, but the court upheld it upon the ground that the practice prohibited may have "tended to promote *irregular transactions by persons not members of the Chamber and amenable to its rules.*"

State v. Milwaukee Chamber of Commerce, 47 Wis., 670, 683.

As the law on the subject of contracts in restraint of trade was thus directly brought to the notice of the court, it is important to note that it was said, after referring to the rules of the organization: "*These are lawful objects.*" (47 Wis., at 685.)

In a Massachusetts case, the preamble to the act incorporating the Milwaukee Chamber of Commerce came under notice. It was recited that one of its objects was "to establish and maintain *uniformity in the commercial usages* of the city," and the court adverted to

"the fact that this body of merchants has passed general regulations upon the subject" under consideration as persuasive evidence that a uniform usage to the same effect existed in that city.

Kershaw v. Wright, 115 Mass., 361, 365.

13. THE SAN FRANCISCO PRODUCE EXCHANGE was organized in 1867. (Clapp, 335.) One of its memberships has realized $1,100 at forced judicial sale and its rules have been said to be "essentially the same as those of other Produce Exchanges."

Habenicht v. Lissak, 78 Cal., 351, 352.

The latter statement was repeated as recently as June, 1897, accompanied by a reference to Bisbee & Simonds on Produce Exchanges for a particular description of these bodies.

Meherin v. San Francisco Produce Exchange, 117 Cali., 215.

14. The PEORIA BOARD OF TRADE was organized in 1850; has 105 members; and the initiation fee is $500. It was incorporated under an Act approved February 8, 1849, section 2 of which specifically provides that "said corporation shall have the right to admit as member *such persons as they may see fit*, and expel any member as they see fit." (Revised Rules, 1888, p. 3.) The rules on the subject of *commissions* are copies of those of the Chicago Board of Trade on the same subject. (Rule XVI., p. 34.)

15. The MINNEAPOLIS CHAMBER OF COMMERCE was organized in 1881; its membership is limited to 550, 538 of which had been taken in 1894; the initiation fee is $1,000; and it owns a building costing $200,000. (Clapp., 329.)

16. The DULUTH BOARD OF TRADE was likewise organized in 1881; has a membership of 185; the initiation fee is $500; and its building cost $310,000.

17. The NEW YORK COFFEE EXCHANGE was organized in 1882; has 312 members; the initiation fee is $1,000; and it owns a building now worth $600,000.

(Secretary's letter prefixed to By-Laws and Rules, 1894.) It needs but a casual glance at the contents of this volume (admirably indexed), to demonstrate that that body is also subject to all the charges of the present bill. The rules cover: Membership, pp. 17-20; discipline of members, pp. 26-27; posting for non-payment of fines, pp. 33, 34; members cannot form a partnership with a suspended, expelled, or insolvent member, pp. 27, 38; *posting of suspended and expelled members*, p. 43; all interest of expelled members in the property of the Exchange reverts to that body, Section 75, pp. 43, 44; any member *seeking an injunction* or other remedy to interfere with the discharge of any of the duties imposed upon the officers and committee "shall, *by that act*, *cease to be a member*," p. 48; *the minimum commissions*, *to* "*be charged and paid under all circumstances*," are prescribed, pp. 60-62; dealings are limited to the interval between prescribed hours, p. 64; *visitors are prohibited from transacting business*, p. 66; and every member *must have his office within half a mile of the Exchange Building*, p. 67. The provisions for trading, inspection, grading and arbitration are on pp. 69-103.

18. The rules of the DENVER CHAMBER OF COMMERCE, as to the conditions upon which membership therein is held, have recently been sustained.

Denver Chamber of Commerce v. Green, 47 Pac. Rep., 140 (Colo., 1896.)

19. From the tabulations made by the Interstate Commerce Commission, September, 1894, official document, part of which is reproduced in Clapp (342), and by the Chief of the Bureau of Statistics of the Treasury Department, June 15, 1889, it appears that Exchanges of a similar nature, having a then membership as stated, are located at the following cities, among others:

Mobile Board of Trade.....248 members.
Atlanta Chamber of Commerce..200 "

Indianapolis Board of Trade.....496 "
Louisville Board of Trade.....682 "
New Orleans Sugar Exchange...197 "
Boston Fruit & Produce Exch...252 "
St. Paul Chamber of Commerce.496 "
Philadelphia Petroleum Exch....223 "
Richmond Grain & Cotton Exch 104 "
Richmond Tobacco Exchange....176 "

20. In Vaughn v. Herndon, 91 Tenn., 64, the rules of the Clarksville Tobacco Board of Trade were upheld; and speaking of a provision requiring members to arbitrate their differences according to the method provided by the rules, the court said that these provisions "are wise legislation and will operate to prevent much needless and extensive litigation as well as *promote the welfare of commerce* if correctly enforced." (68, 69.)

THERE EXIST ALSO A LARGE NUMBER OF COTTON EXCHANGES:

1. The NEW YORK COTTON EXCHANGE was organized in 1870; has 454 members; the initiation fee is $10,000; and it owns a building costing over $1,000,000 (Clapp, 267).

CHARTER AND RULES OF NEW YORK COTTON EXCHANGE.

The charter, rules and regulations, adjudged by this Court, in 1893, "to show that this Cotton Exchange was *a lawful body, organized for lawful business purposes*," (Bibb v. Allen, 149 U. S., at 489), embody the following provisions:

The special charter of the corporation discloses its purposes to be, among others, "to provide, regulate and maintain a suitable building for a Cotton Exchange; to adjust controversies between its members; to establish

just and equitable principles in the trade; *to maintain uniformity in its rules, regulations and usages;* * * and generally *to promote the cotton trade* of the city of New York, *increase its amount*, and *augment the facilities by which it may be conducted.*" (Laws, N. Y., 1871, Ch. 365, Sec. 3.) Upon all awards made by its Arbitration Committee, a judgment of the Supreme Court may be entered, and such awards shall be unimpeachable, except for fraud (Ib., Sec. 7). By Chapter 228, Laws, N. Y., 1880, the corporation was authorized to establish a Gratuity Fund for the benefit of families of deceased members. Other amendments were made in 1881 (Chapter 113) and in 1883 (Chapter 59).

In the By-Laws and Rules (14 Ed., 1894), provisions concerning the following matters are found:

The qualification and election of members, each of whom is required to pledge himself to respect and abide by the then existing or subsequently adopted regulations (Secs. 1–3, pp. 9, 10).

"A certificate of membership may be transferred to a member or member-elect, *but to no other person*" (Sec. 5, p. 10).

In Allen v. Cotton Exchange, digested in Dos Passos, Stock Exchanges 91, 92, the court refused to compel the organization to recognize the purchaser of one of its memberships, without having himself been first duly admitted: "It is very evident that *the whole design of the organization* would be thwarted by introducing into the Exchange purchasers at a judicial sale, without a compliance *with the requisite rules of admission and against the wishes of the regular members.*" (See, also, Campbell v. Cotton Exchange, Dos Passos, 95, 96.)

On failure to pay an assessment or a fine within a given time, a member is "*posted*" *and deprived of the privileges of membership* (Secs. 8, 9, pp. 11, 12).

When a member shall find himself *insolvent*, or

shall fail to *comply with a contract*, his name is likewise *posted* and the privileges of his *membership suspended* (Secs. 10–18; pp. 13–19). His membership is subject to sale *for the benefit of his Exchange creditors* (Sec. 16, p. 18), to a member or member-elect at public vendue in the Exchange Rooms (Sec. 28, p. 24), provisions which this Court has declared to be valid (Hyde v. Woods, 94 U. S., 523).

All controversies growing out of Exchange dealings *must* be arbitrated on the request of *either party* (Secs. 19–27, pp. 19–24).

Members may be suspended or expelled, *a*, for wilful violation of any rule; *b*, for refusing to submit to arbitration or to abide by an award; *c*, for buying or selling for a clerk or employee of a fellow member without the latter's written consent; and, *d*, for any other misconduct in his relations to the Exchange or its members, or for any disreputable or fraudulent transaction *with a non-member* (Sec. 29, p. 25). The trial of charges, and the disposition of a membership in case of expulsion, are covered by sections 30 to 34, pp. 25–28.

The officers and standing committees, and their respective duties, form the subjects of sections 35 to 59, pp. 31–46.

The Committee of Trade (*not Restraint of Trade*) is charged with the duty of reporting "such rules and regulations, etc., as will, in their opinion, *best promote the interests of all persons interested in the cotton trade of the city of New York*" (Sec. 53, p. 39).

"All persons engaged in handling cotton or print cloths for members of this Exchange, (including, among others, warehousemen, inspectors, weighmasters, samplers, and carriers), *must be licensed by the Board of Managers*" (Sec. 60, p. 46), and no action taken by any such persons not thus licensed, is permitted to be recognized under the subsequent trading regulations.

Trading is prohibited *except between given hours*, and contracts, whether made on the Exchange or else-

where, at other hours, *are not binding* (Sec. 65, p. 51).

Non-residents may be admitted as visitors, but *are not permitted to transact any business* while visiting (Sec. 66, p. 52), thus confining business access strictly to members in good standing.

Contracts for future delivery are only permitted to be made *between members* (Sec. 73, p. 61).

Inspection, classification, weighing, sampling, warehouseing, packing, grading, dockage, and delivery, are regulated in great detail (Sec. 74–88; pp. 62–75).

The *charges and fees for these various services* are fixed by section 84, pp. 71, 72.

Cotton shall only be inspected, or be receivable and deliverable within *a certain limited district* of the city and from and at such warehouses as may be *duly licensed.* (Sec. 89, p. 75.)

All *contracts must be signed "by members of the Exchange having permanent offices in the city of New York and within * * half a mile of the Exchange building"* (Secs. 103, 108, pp. 81, 82, 84).

The matter of *minimum commissions* is fully regulated by section 109, p. 84. They are required to "be charged and paid *under all circumstances;*" and the schedule involves the following "discriminations:"

When the transaction is for a *non-member*, 12½ cents a bale;

When for *a member who does not have a permanent office within one-half mile of the Exchange*, 7½ cents per bale;

When for *a member having such office*, 2½ cents per bale;

When for such member *acting on behalf of a named principal*, 1 cent per bale.

On all joint account transactions with non-members, and on all individual business of a non-member partner, the *full commission* of 12½ cents per bale must be charged.

The trade in Print Cloths is likewise fully regu-

lated (Secs. 122-129, pp. 97-101), including *a schedule of minimum commissions* (Sec. 128, p. 100).

As will be observed this schedule also "discriminates" between the rates to be charged to non-members and to members, respectively, and between the rates to be paid by members when dealing as *principals* and when acting as *brokers* for others.

Rules 2 and 4 forbid *wagering contracts* (pp. 104, 105), and *betting* of any kind whatsoever is prohibited by Rule 26 *a* (p. 126).

Margins, closing, clearing, settlements, quotations, and deliveries, are fully regulated, both as to cotton (pp. 102-117), and as to print cloths (pp. 126-138).

It will be observed that this is an excellent type of the regular Commercial Exchange, as developed by American ability and experience, and as most admirably adapted to facilitate the orderly and honorable conduct of an important branch of our commerce, under usages codified so as to insure uniformity, certainty, and the protection of every interest concerned.

Kingsbury v. Kirwin, 9 Jones & S., 451, 454; affirmed, 77 N. Y., 612;

Lehman v. Strassberger, 2 Woods, 554, 556, 562.

As such, it merited the approving sanction which it received at the hands of this Court; and yet, no objection has been urged in this case which, if sustained, will not be *equally applicable to that organization.*

Memberships in this body were endorsed as *lawful* property but declared to be subject to the rule against transfers to a non-member in two well-considered cases.

Ritterband v. Baggett, 4 Abb. N. C., 67, 68, 71;

Powell v. Waldron, 97 N. Y., 328, 331.

These rules, as above summarized, embody a valid contract binding on all members.

Baum v. Cotton Exchange, 21 Abb. N. C., 253.

2. The NEW ORLEANS COTTON EXCHANGE was organized in 1870; and owns a building costing $450,

000. It has 377 members, who are required to own at least one share of stock worth $1,000. (Clapp, 281.)

The Supreme Court of Louisiana has said of this organization: "Its membership comprises the *leading merchants* engaged in all the ramifications of *the vast cotton trade of the city*. It conducts its business in the most splendid building of the metropolis, situated on one of its most important public thoroughfares."

Conner v. Robertson, 37 La. An., 814, 815.

In a suit by members of this Exchange for services rendered "under the rules and regulations prescribed by that institutiou, to be compensated by the *commissions thereby allowed*," it was held that parties dealing with members of such an Exchange did so with presumed knowledge of and subject to its rules and regulations, and a *recovery was adjudged accordingly*.

Lehman v. Feld, 37 Fed. Rep., 852.

3. There are also Cotton Exchanges at the following points:

Charleston,	Clapp,	287.	Galveston,	Clapp,	287.
Savannah,	"	289.	Houston,	"	287.
Augusta, Ga.,	"	285.	Vicksburg,	"	342.
Memphis,	"	286.	Natchez,	"	342.
Mobile,	"	287.	St. Louis,	"	342.
Norfolk,	"	289.			

4. The MEMPHIS COTTON EXCHANGE was organized in 1873; its present membership is 165, and is limited to 175; initiation fee $500. The provisions as to membership and the manner of trading are similar to those of Produce Exchanges.

A table of minimum commissions is prescribed, which governs members in all cases "and shall be *absolutely net and free of any rebate, telegraphic charge, and discount in any way, shape or manner*." The giving of *a bonus or sharing of commissions* is forbidden. Any violation of the rule, or attempt to evade the same, is punishable by a fine of $1,000, and by expulsion for the second offense. (Annual Report, 1889, p. 50.)

Miscellaneous Exchanges.

1. The Providence Board of Trade was incorporated by special charter granted in May, 1868, "for the purpose *of promoting trade and commerce* in the City of Providence and its vicinity." By a subsequent act, (January, 1880), it was given "power to expel or suspend any member for such cause or causes as said Board of Trade may by its by-laws specify." (Manual Providence Board of Trade, 1897, pp. 9, 11.) As the body is not composed of commission merchants, its rules do not prescribe a schedule of commissions. But its members are largely interested in the business of buying and selling cotton (for use in the mills of Rhode Island and elsewhere in New England), and this "interstate" trade is regulated with great care and in such a way as to subject the associates to the contention of this complainant.

The By-Laws regulate the admission of members; no person shall be allowed the privilege of membership until he has been elected and qualified; and membership *is limited to 600.* (Art. I.)

On failing to pay an assessment, a member is stricken from the rolls and *his name posted on the bulletin board.* (Art. V.)

Committees on Arbitration and Appeal are provided. (Art. VI.)

No persons engaged in business *are admitted to the rooms of the Board* unless they are members. (Art. VII.)

Members are subject to suspension or expulsion for violating the rules; for ungentlemanly or dishonorable conduct in the board's rooms; and for being guilty of a fraudulent business transaction, whether with a member or non-member; and on conviction of a crime. (Art. VIII.)

It is interesting to note the careful provisions for the inspection, weighing and "dockage" of cotton,

(Rules 4, 5, 6, 7, 8, 9, 12, 15, Manual, pp. 29, 31), which proceed upon precisely the same lines embodied in the regulations adopted by the defendant Exchange for the "dockage" of hogs.

In the "Historical Review" contained in this publication, these "conspirators" have the audacity to say: "This body was organized in the year 1868, 'for the purpose of *promoting trade and commerce* in the city of Providence and vicinity,' according to the words of the charter. The *most influential and active merchants and manufacturers* then engaged in our city and its neighboring districts, were included among the members. The majority of the founders have passed on and their earthly labors have ceased, but *the excellent influence of their active career* remains—an inheritance for the whole community. All important enterprises tending to the industrial and commercial development of our city have been *encouraged and directly promoted* by the *efficient* action of this Commercial Exchange. The *steadfast and conserving authority* of the institution has been felt in the quiet course of the market, even when that authority has not been put forth in positive action. Its rules of business have been so well adjusted to the customs and conditions of the community that very little difference or dispute has called for action on the part of its tribunals and arbitrators. * * * In June, (1868), a resolution was adopted, seeking the sale of cotton by actual weight, and the establishment of legal tare. This began a long series of inspection digest and legislation, *to regulate the Providence market for cotton, that great factor in our industries.* The present season witnessed a careful revision and a new manual embodying the changed conditions of the market. * * *

"In all these years the Board has interested itself in the movement of legislation and the agitation of public matters affecting our city and State. We can only mention a few of the measures, to which our predecessors have given their attention. In Bankrupt

laws, from the first Jenckes Act to the pending Torrey Bill, the Board has manifested *a lively and almost constant interest.* Senator Ingalls especially commended our *prompt and judicious action.* * * * A line of measures more nearly affecting Rhode Island is to be found in the great internal improvements. Herein we are *always communicating with our Senators and Representatives in Congress.* * * * The officers of the Board have given much attention to the growing *exports* of manufactures, and it would appear that our community must ultimately *find profitable business* in that direction." (Manual, 12–15.)

A glance at the list of the members of this organization will disclose whether it is true that the most prominent and influential citizens of Rhode Island are concerned in this effort to *restrain trade* and to *injure the public welfare.* That list includes Judge LeBaron B. Colt, (33); Senator Nelson W. Aldrich, (32); State Supreme Court Judge Horatio Rogers, (36); and Hon. D. Russell Brown, Governor 1892–96, (32).

2. It is worthy in this connection, to note the important organization known as the NEW YORK REAL ESTATE EXCHANGE. This was formed in 1883, it being found, from the long experience, "that there must be some system whereby real estate affairs should be managed *with the respectability and safety proper to all legitimate transactions.*" This desirable result was attained by the organization of an Exchange "with its comparative *uniformity of methods, consolidation of interests, command of public confidence*, and diffusive beneficence." Nearly $600,000 were expended in acquiring and equipping a suitable building. Five hundred members were enrolled, each of whom were required to own at least $1,000 in stock of the corporation. Membership is at the pleasure of the board of directors and includes some of the most prominent citizens of New York. "They control lands and buildings in that city estimated at $800,000,000."

It has been pointed out that in dealings valued at over $400,000,000 during the first three years of its existence, "not a single complaint against broker or auctioneer has been lodged."

The dealings are not confined to realty situate in New York, but include property *in every state in the Union*, transactions which this complainant would designate to be interstate commerce. There are 22 desks which are rented to auctioneers, and 1888 the sale of the first choice netted $1,600. Members of the Exchange *alone can compete for them. A detailed tariff of commissions for auctioneers and brokers* is provided and required to be observed, $25 being the minimum charge allowed.

The various State courts have each entered an order that all foreclosure and other judicial sales of realty shall be made *at the rooms of the Exchange*, thus affirmatively recognizing the legality of its existence and rules. More than that, *the commissions fixed by those rules actually include those charged for making such judicial sales.* The schedule also covers auctioneer's fees on sales of stock and bonds, private sales by brokers, loans, exchanges, leases, the management of estates, and appraisements. The prescribed "commissions may not *be divided or lessened without liability to discipline.*" (HARPER'S MAGAZINE, November, 1888, pp. 928, 935, Vol. 77.)

These facts came under judicial review, in a case involving the assignability, from one member to another, of an auctioneer's seat. It was held that none but members could compete for such a seat and when once acquired the right was essentially personal, and non-transferable even to a fellow-member.

McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 15 N. Y. Supp., 206.

3. The corporate name of the KANSAS CITY REAL ESTATE EXCHANGE was protected against assumption by another as a property right, in analogy to the rules governing common law trade marks.

State *ex rel.* v. Secretary of State, 92 Mo., 355.

4. The NEW YORK CONSOLIDATED STOCK AND PETROLEUM EXCHANGE also deserves notice. It resulted from an amalgamation of several mining, petroleum, and other Exchanges. It has 2,050 members; membership is valued at $125; and it owns a building costing $420,000. (Clapp, 263.)

A suspension from this exchange was upheld in the well-considered case of

Lewis v. Wilson, 121 N. Y., 284, affirming 50 Hun, 166.

This body through its president, Mr. Wilson, was the plaintiff and recognized as having a standing in a court of equity.

Wilson v. Commercial Telegram Co., 3 N. Y. Supp., 633; 18 N. Y. St. Rep., 178.

As recently as October 5, 1897, a learned court, speaking through CULLEN, J., said of parties who belonged to this body: They "were members of a regular Exchange, and (thereby) held themselves out *as carrying on a legitimate and lawful business.*"

Prout v. Chisholm, 47 N. Y. Supp., 81 N. Y. State Rep., 376, 379.

The constitution and rules of the organization which thus came under judicial scrutiny disclose that its members devote themselves to dealings in petroleum, stocks, bonds, and other securities, agricultural and commercial products, ores, metals and other minerals. The provisions and obligations are substantially the same as those prescribed by the rules of the New York Stock Exchange. (Revision 1894.)

All bonds and securities are required to be approved by committees before they can be dealt in. (Art. VI., Sections 4-8.)

A committee on *commissions* is provided, whose duty it is to investigate all charges of violation of the rules relating to commissions; if they find such charge or charges to be proved, they shall report the fact to the

president, who shall at once suspend the offending member. (Art.VI., Section 7.)

Article XVIII. provides that "*the rates of commissions shall be such as may be fixed from time to time by the Board of Directors. Any member doing business for less than the rate so fixed*" shall be suspended for ninety days for the first offense and be subject to expulsion for the second.

Pursuant to this power, the Board of Directors have prepared *an elaborate schedule of minimum commissions.* (pp. 62–4.)

Notice must be given of all partnerships formed, and none can be formed with a suspended member or an insolvent person. (Art. XII.)

Members may be expelled for fraud, and expelled or suspended for violating the constitution or rules, or for misconduct. (Art. XIII.)

A Gratuity Fund, to provide for the families of deceased members, is provided for (Art. XXII.), the benefits of which accrue only to persons who are members in good standing at the time of their decease.

Legal interference with officers or committees subjects a member to suspension or expulsion. (Art. XXIV.)

No member is permitted to become a member of *a similar organization*, except only the New York Stock Exchange. (Art. XXV.)

Dealings are limited to *an interval between certain prescribed hours* and *to the rooms of the Exchange.* (By-Law 1.)

Dealing with *non-members* during these hours subjects the offender to suspension (p. 55).

A member trading directly or indirectly in any other similar organization in New York City, is subject to suspension or expulsion (pp. 55–6).

Every member is required to have a place of business in the vicinity of the Exchange (p. 56).

Elaborate rules are prescribed to govern the deal-

ings in securities, petroleum and other oils, grain and other products, and metals (pp. 65–138).

5. The powers of the LUMBERMAN'S BOARD OF EXCHANGE (of Minneapolis) were considered in

State v. Lumberman's Exchange, 33 Minn., 471.

6. The most recent organization was thus noticed in the press reports, (*St. Louis Republic*, February 12, 1897):

"New York, Feb. 11.—The first Wool Exchange in the United States, and the fourth or fifth in the world, has been incorporated in this State and will be in operation next week in the fine new Wool Exchange building at West Broadway and Beach street. When trading begins *it is hoped by the members to regain for New York the prestige it once had as the wool center of the United States.* The Exchange is capitalized at $1,000,000. It will have in the neighborhood of 1,000 members, trading members becoming such by the payment of a license fee of $100. A general exchange business in wool will be conducted. Allan McNaughton is the president of the new Exchange. He has been actively engaged in the wool business and is the promoter of the enterprise."

V.

LIVE STOCK EXCHANGES. THEIR HISTORY AND RULES.

It was to be expected, therefore, that Live-Stock Exchanges would also come into being. In a general way, it may be said that there is not an important live-stock market in the United States which has not been established and maintained by an Exchange. Such bodies are located at Chicago, Kansas City, St. Louis, East St. Louis, Omaha, Indianapolis, Buffalo, Sioux City, Cincinnati, and Fort Worth.

From the following cases the methods of doing business at these bodies and by their members, including the items of commissions charged, can be fully gathered:

Irwin v. Thompson, 27 Kas., 643;
Thompson v. Irwin, 42 Mo. App., 403;
Stock Yards Co. v. Mallory, 157 Ill., 554;
Cordell v. Hall, 34 Fed. Rep., 866; 142 U. S., 116;
Union Stock Yards Bank v. Gillespie, 41 Fed. Rep., 231; 137 U. S., 411;
Burke v. Fry, 44 Neb., 223.

1. The CHICAGO LIVE STOCK EXCHANGE was fromed in 1884; has 698 members, and the initiation fee is $1,500. The rules of that body will be found to be in all essential respects the same as those of the Kansas City Exchange; indeed, the most important rules of the latter body are literal transcripts of those of the former.

The rules concerning memberships, *commissions* and *solicitors* are the same. (Rules VIII. and IX.)

The penalties are likewise the same; and so is the provision for paying a reward for proof of a violation in this respect. (Rule IX., sections 8, 10.)

Dealings with other live-stock brokers who are not members are prohibited. (Rule IX., section 15.)

The causes for suspension and expulsion are identical. (Rule IV., sections 7, 8, 14.)

There is an additional rule not found at Kansas City, prohibiting "*the loaning of money for less than the legal rate of interest of Illinois.*" (Rule IX., section 13).

The officers of this Exchange have embraced the leading members of their occupation, including J. E. Greer, who was a member of the committee on appeals in 1893–94 and 1894–95, and F. O. Mills, a member of the same committee in 1892–93, 1895–96 and 1896–97. These are the members of the Kansas City Exchange who are alleged, in the pending bill, to have been disciplined by it, and who were the complainants in Greer v. Stoller, 77 Fed. Rep., 1.

If, as the District Attorney said on the argument below, he had to rely upon the information vouchsafed

by these gentlemen, it is proper to test their good faith in volunteering the same, by inquiring why they did not also cause proceedings to be brought against *the very combination of which they are members and even officers!* Can it be believed that three hundred of the best citizens that Kansas and Missouri can boast of, are to be branded as conspirators against commerce and most of them and their many employees thrown out of employment, and, perchance, impoverished by being denied the right to indulge their chosen occupation *according to the only rules and regulations which have been dictated as feasible by the experience of the commercial world*, merely to the end that the private malice of Greer, Mills & Co. may be gratified?

The rules of the Chicago body gave rise to the much-argued case of American Live Stock Commission Co. v. Chicago Live Stock Exchange, 143 Ill., 210; 36 Am. St. Rep., 385; 18 L. R. A. 190, decided in 1892. The proceeding was by a party engaged in the live-stock commission business to enjoin the defendant from refusing to permit it to have and enjoy the privileges of the Chicago Exchange; to have certain rules *providing minimum rates of commission and prohibiting business intercourse with non-members*, declared to be void; to enjoin any notice to members *not to deal with plaintiff*, and any endeavor *to prevent complainant from carrying on its business* at the Chicago Stock Yards; and for general relief.

The petition set out the organization of the Exchange; the combination of its members *to control the selling of live-stock in the Chicago market;* the consequent *impossibility* to sell or exchange live stock at said market except through the members of the Exchange; that under the course of business there prevailing, no one could sell *except members*, and purchasers *would not buy from others*; the extent of the market, showing it to be *the largest in the world*, was set out; the adoption of *a rule fixing mini-*

mum commissions, which were alleged to be *unjust and unreasonable*; that shippers were, perforce, *compelled to pay them*; that thereby, to a great extent, the price of live stock throughout the United States was fixed; that the members had *combined to coerce persons to pay unreasonable commissions and to prevent stock from being sold until a member was employed for that purpose*; that a great proportion of such stock was bought by four certain parties (packers), so that their refusal to purchase from a given person made it *impossible for* such person to deal in said market; that said four parties were members of the Exchange and under its rules *refused to buy from a non-member*; that the Exchange refused to grant plaintiff the privileges of membership and threatened *to notify its members not to deal with plaintiff*; that amendments to the rules had been adopted *specifically directed at plaintiff*, by reason of its mode of doing business (by which its stockholders in effect, were enabled to have their live stock sold *at less than the prescribed commissions*).

The opinion sets out the purposes of the Exchange as enumerated in the preamble to its articles of association, and defined it to be a body *not itself engaged in business* but merely providing facilities to its members, for carrying on, each for himself, his separate business, according to the prescribed rules.(226.) It was held that the plaintiff was neither a member nor entitled to membership as a matter of right; that the Association had an undoubted right to prescribe who should be eligible to election as a member; and "no one can justly claim to be a member who has not been admitted in the mode thus prescribed." (227-229.) It was conceded that the effect of certain recent amendments to the rules of that Exchange had the effect to *debar plaintiff* from becoming a member, and also that the members of the Exchange *would refuse to buy* any live-stock consigned to plaintiff for sale at the Chicago stock yards. (233.)

It will be observed that the bill in that case differed

from the one in the case at bar in that there is no allegation here that the commissions charged at Kansas City are *unreasonable or excessive.*

And, for self-evident reasons, the element whether the commissions prescribed by Rule IX. of the defendant Exchange are excessive or not cannot be injected into this case by means of affidavits in rebuttal, disclosed for the first time on the hearing. There is no allegation in the bill on the subject. The showing of the defendants is not only that the commissions prescribed are reasonable, and such as prevail throughout the world, but also that from *fifty to seventy per cent.* of the amounts collected from that source by members are paid out for the necessary expenses of their occupation. The showing further demonstrates the absolute need of an Exchange, with a drastic rule on the subject, in order to destroy the vicious and odious practice of discrimination and preferences in the way of secret rebates and the like, which had previously prevailed to the detriment of the market. This consideration is, of itself, a sufficient justification for the rule under review, for it discloses that the smaller shipper—the one who was in greatest need of a uniform schedule—is protected against favoritism to the great cattle companies and the larger shippers of live stock; it promotes uniformity and eliminates a fruitful source of complaint on the part of shippers. So, too, it was held as recently as November, 1896, that members of a Live Stock Exchange were entitled to the protection of such a rule against *the practices of unscrupulous fellow-members.*

Jackson v. South Omaha Live-Stock Exchange, 68 N.W. Rep., 1051, 1053, (Neb.).

A learned judge plainly indicated that "*a subterfuge*" to evade the rules concerning commissions was deserving of animadversion.

Baxter v. Allen, 46 Ill. App., 464.

It is part of the known history of the Act of the Kansas Legislature of 1891 (chapter 158), known as the

Roe Bill, upon which the decision of one of the Courts of Appeals of that State is based, that it was procured, indeed "railroaded" through, by the efforts of the American Live Stock Commission Company, the unsuccessful complainant in the Illinois case.

While that statute can have no bearing here, where the decision must rest on Federal legislation alone, it deserves to be noticed, in view of the great reliance placed upon the utterances in that case, that:

a. The case negatives any feature of interstate commerce on the part of these defendants;

b. The utterances alluded to are at variance with the characterization of such Exchanges to be found in numberless cases and official reports elsewhere, especially in the Federal jurisdiction;

c. They are mere *dicta*, and proceed largely upon the allegations of the plaintiff's bill, which it apparently was not deemed essential, in view of the point at issue, to overwhelm by a full showing; and,

d. The act of the Kansas legislature, which was adopted as the basis of the opinion, is, beyond question, so violative of constitutional guaranties that a Federal court would unhesitatingly stamp it as "no law at all." (Cool. Const. Lim., 6 ed., p. 222). Such arbitrary discriminations are not to be tolerated.

In re Grice, 79 Fed. Rep., 627, 639 *et seq.;*
Gulf etc. Ry. Co. v. Ellis, 165 U. S., 150;
Fraser v. McConway & Torley Co., 82 Fed. Rep., 257.

2. The ST. LOUIS LIVE STOCK EXCHANGE was formed in 1885; has a membership of 128; the initiation fee is $1,250; and its rules are substantially the same as those which prevail at Chicago and Kansas City.

3. The KANSAS CITY LIVE STOCK EXCHANGE was formed in 1887; has about 300 members; and the initiation fee is $2,500. Its rules are but partially set out in the bill. It was of these rules that Judge PHILIPS said (and as that complainants' counsel included the names

of Judge Albert H. Horton and Gardiner Lathrop, Esq., and the Act of July 2, 1890, was adverted to, the statement is entitled to even more than usual weight), that "neither does the complainant complain that the general articles of the association are *contrary to law*, or that the limitation in the articles of agreement and by-laws fixing a *minimun commission* at which any member shall sell live-stock shipped to this market, and prohibiting its members from conducting such business 'on the outside' are *in restraint of trade*, or *tend to create a monopoly*."

Greer v. Stoller, 77 Fed. Rep., 1, 7, citing, among others, the last noted Illinois case, (8).

4. The INDIANAPOLIS LIVE STOCK EXCHANGE was likewise formed in 1887; has 60 members; the initiation fee is $500; and the rules are practically transcripts of those of the Chicago Exchange.

5. The SOUTH OMAHA LIVE STOCK EXCHANGE was formed in 1889, and has rules similar to those of its sister Exchanges. It has 204 members and the initiation fee is $1,000.

It was of this body that a Court not at all friendly to "trusts" (State v. Nebraska Distilling Co., 29 Neb., 700), held that the rule on the subject of *commissions and rebates* properly prohibited "*the payment of money for the purpose of influencing shippers to patronize one live-stock commisssion firm rather than another*," and said that this was a rule *to the protection of which members were entitled*. The injunction was *denied*, with *no word of criticism* upon the legality of the existence of the Exchange or the validity of its rules.

Jackson v. South Omaha Live Stock Exchange, 68 N. W. Rep., 1051, 1053, (Neb., 1896.)

6. The rules of the SIOUX CITY LIVE STOCK EXCHANGE, adopted August 5, 1889, are to the same substantial effect, and contain a prohibition against sending a *prepaid telegraphic or telephonic message* relating to the state of the market. (Rule XIX., Section 7, p. 17.)

7. The EAST BUFFALO LIVE STOCK ASSOCIATION was organized in 1887; has about 100 members; the initiation fee is $500; and the rules are for the most part literal duplicates of those under consideration. (See Revised Rules, 1893.)

8. At CINCINNATI, the live-stock trade is almost exclusively in hogs and is under the control of the Chamber of Commerce. *A table of commissions is prescribed*, the dockage of hogs provided for, and the privileges of the organization limited *to members in good standing*. (Annual Report, 1895, pp. 262, 238, 23.) This is supplemented by an agreement among those engaged in selling live-stock for a commission at the Cincinnati and Covington, (Ky.) yards, whom the complainant would declare to be clearly engaged in interstate commerce, for those parties not only use the telegraph but also the Covington bridge, in transacting their business. (See Rules of Cincinnati Live Stock Commission Merchants, 1889.)

9. The FORT WORTH LIVE STOCK EXCHANGE was formed in 1893, in a State which prides itself on having taken the lead *in antagonizing combinations calculated to injuriously affect the public*. The published rules of that body are in affect the same as those which prevail at Chicago and Kansas City. For provisions on the subject of commissions, rebates, solicitors, etc., see Rule IX., pp. 17–20.

10. The PITTSBURGH LIVE STOCK EXCHANGE was formed in December, 1895, and granted a certificate of incorporation by the Court of Common Pleas of Allegheny county on January 27, 1896. The petition for such certificate declared that "said corporation is formed for the purpose of fostering and protecting the general business interests of all its members, and the regulation of business transactions among the members and with customers" (Manual of said Exchange, 3). The order of the court discloses that the rules of the body were submitted to judicial scrutiny (7), and the judgment was

"THAT SAID PURPOSES ARE LAWFUL AND NOT INJURIOUS TO THE COMMUNITY." (6).

These rules are substantially the same as those of other Live Stock Exchanges, including *a schedule of minimum commissions* (Rule IX., p. 30); a prohibition against rebates except to members of other Exchanges (Sec. 3, p. 32); a regulation of the employment of solicitors (§ 5, p. 32); a provision forbidding the sending of prepaid telegrams unless it be to report actual sales on the same day on behalf of the addressee (Rule XVI., § 6, p. 37); and the personal solicitation of employment within the limits of Allegheny county between certain hours (Rule XIX., p. 38).

Honorable conduct is enforced (Rule IV., pp. 11–18); soliciting employment to sell live stock consigned to another member, or accepting such employment after a reputable fellow-member has offered the property for sale, is declared to be uncommercial conduct (§ 6, p. 29); and delinquencies and defaults on the part of shippers or purchasers are required to be reported and further dealings with them are forbidden (§§ 1–4, pp. 35–37).

Membership may be surrendered or transferred by a member "provided, however, that *he cease to do business* at the Pittsburgh Central Stock Yards," (§ 3, p. 28), and all persons beginning a live-stock commission business at said Yards shall, after twenty days, become subject to said rules, and, failing to do so, members are enjoined not to thereafter deal with such person (§ 5, p. 37).

RECAPITULATION.

NUMBER OF MEMBERS AND VALUE OF MEMBERSHIP AND BUILDINGS.

1. As already stated, the adoption of the contentions of the complainant will not only render all memberships in these bodies entirely valueless, but brand

each of the holders thereof as guilty of a crime under the Act of Congress approved July 2, 1890.

Tabulating the value of such memberships and the number of persons holding the same, so far as the data at hand discloses the needed information, produces the following result:

Name of Exchange.	No. of Members.	Value of Membership.	Aggregate Membership Value.
New York Stock	1,100	$35,000	$38,500,000
Boston Stock	150	12,500	1,875,000
Philadelphia Stock	230	8,000	1,840,000
Chicago Stock	445	1,500	667,500
San Francisco Stock	200	6,000	1,200,000
Chicago Board of Trade	1,900	10,000	19,000,000
New York Produce	3,000	10,000	30,000,000
St. Louis Merchants	3,000	2,500	7,500,000
Boston Board of Trade	975	350	281,000
Philadelphia Commercial	490	1,000	490,000
Baltimore Corn and Flour	550	250	137,500
Buffalo Grain	478	100	47,800
Detroit Board of Trade	125	50	6,250
Toledo Produce	100	250	25,000
Milwaukee Chamber	600	1,000	600,000
Kansas City Board of Trade	200	1,000	200,000
Peoria Board of Trade	105	500	52,500
Minneapolis Chamber	538	1,000	538,000
Duluth Board of Trade	185	500	92,500
New York Coffee	312	1,000	312,000
New Orleans Cotton	377	1,000	377,000
New York Cotton	450	10,000	4,500,000
Memphis Cotton	165	500	82,500
New York Real Estate	500	1,000	500,000
New York Consolidated	2,050	125	256,250
Chicago Live Stock	698	1,500	1,047,000
St. Louis Live Stock	128	1,250	160,000
Kansas City Live Stock	300	2,500	750,000
Indianapolis LiveStock	60	500	30,000
Omaha Live Stock	204	1,000	204,000
Buffalo Live Stock	100	500	50,000
	19,819		$106,362,050

It will be observed, by comparing this table with the various compilations of the names and locations of American Exchanges already cited, that a large number of them have not been included in the result. This is due to the absence of accurate data in reference to those omitted. It is a fair estimate that these would increase the number of members affected to considerably over 22,000, and the aggregate value of Exchange memberships to more than $110,000,000.

2. Many of the important Exchanges occupy leased premises. In this category are the New York, Boston, Chicago, and San Francisco Stock Exchanges. In many other instances, and this includes all Live Stock Exchanges, the premises where business is done belong to entirely distinct and independent stock yards companies. Compiling the value of the buildings owned by the American Exchanges, and in the ownership of which they are largely interested, shows the following result:

Philadelphia Bourse	$ 1,350,000
Chicago Board of Trade	1,850,000
New York Produce	3,200,000
St. Louis Merchants	1,800,000
Boston Board of Trade	500,000
Baltimore Chamber of Commerce	600,000
Cincinnati Chamber of Commerce	1,000,000
Toledo Produce	150,000
Milwaukee Chamber	115,000
Kansas City Board of Trade	662,500
Minneapolis Chamber	200,000
Duluth Board of Trade	310,000
New Orleans Cotton	450,000
New York Cotton	1,000,000
New York Coffee	600,000
New York Real Estate	600,000
New York Consolidated	420,000
Portland (Ore.) Chamber	825,000
Total	$15,632,500

The New York Stock Exchange, however, holds all the stock of the corporation which is the owner of the premises occupied by it.

Dos Passos, Stock Exchanges, 20.

The National Board of Trade.

In the wake of the organization of the Association of Chambers of Commerce of the United Kingdom, the National Board of Trade of the United States was formed in 1868 for these declared purposes:

"In order to promote *the efficiency and extend the usefulness* of the various Boards of Trade, Chambers of Commerce, and other chartered bodies organized for general commercial purposes in the United States; in order to secure *unity and harmony of action in reference to commercial usages, customs and laws;* and, especially, in order to secure the proper consideration of questions pertaining to the *financial, commercial and industrial interests of the country at large.*" (Proceedings, 1896, vii.)

Since 1879, this body has held its annual meetings (except three) in the city of Washington. It appears from the published proceedings, which are stated to be regularly transmitted to Congress, that prominent members of that body have many times been present as participants in the discussions. In 1892, a formal visit was paid to President Harrison, who said, in acknowledgment, among other things: "I have always observed the discussions and conclusions at which they (the delegates from the various Exchanges belonging to the body) have arrived in their annual meetings, *with interest and respect.*" (Proceedings, 1892, p. 225.)

It can hardly be supposed that the very conscientious and learned Chief Executive believed that eighteen months previous he had signed a bill under which the gentlemen he was addressing had become *common criminals!*

Prefaced to the 1875 Report of the National Board is the following extract from an address delivered by John Bright to the English body: "I believe it is objected by some persons that great questions are for the Legislature and not for Chambers of Commerce. I should like to ask what would Parliament be, if it were not for *that public opinion* which not only *instructs* it, but *impels it forward?*"

In the Introductory Note to the Report for 1896, (p. v.), it is stated that recently a committee of this body had appeared before the Senate Interstate Commerce Committee, and that a priuted report of the proceedings had been published.

A list of the Exchanges who are members of the National body is printed on pp. xiv. and xv. of the 1896 Report. That list includes the Baltimore, Boston, Buffalo, Chicago, Cincinnati, Kansas City, Louisville, Omaha, New Orleans, Philadelphia, St. Louis and Toledo Grain Exchanges; also, the general Trade Exchanges at Baltimore, Boston, Buffalo, Cincinnati, Cleveland, Columbus, Indianapolis, New Orleans, New York, Philadelphia, Pittsburg, Providence, Rochester and St. Louis; and the New York Cotton Exchange most of which have been noted, *supra.*

A glance at the official Programme for the 1896 meeting and at the list of resolutions adopted, (Report, 1896, pp. 22–48; 253–267), will demonstrate how constant and numerous are the instances in which these bodies have been brought to the attention of Congress, and also enable one to judge how much truth there is in the charge that they are seeking to *restrain* the commerce of the country.

Among the subjects discussed were these: Consular Service, Currency Reform, Monetary Commission, Bankruptcy Legislation, Improvement of Navigable Water Ways; Coast Defences; Nicaragua Canal; Creation of a Department of Commerce; Railway Pools; Freight Classification; Merchant Marine; Extension of

American Export Trade; Reciprocity; Arbitration; Postal Rates; Trade Marks; Crop Reports; and Pure Food Laws.

VI.

The Legal Status of an Exchange.

It is now established that such an Exchange is *not engaged in business*, in any proper sense of the term. It is an aggregation of persons who, for convenience, provide a place "in which *each for himself*, and for his individual profit, may promote *his own business*. The association does not share in the profits or losses of the individual associates. Each member takes his own gains and each individual sustains the losses incident to his own engagements."

White v. Brownell, 2 Daly, 329, 336, 355, 356;
Leech v. Harris, 2 Brewst., 571, 575, 576;
American Com. Co. v. Live Stock Exchange, 143 Ill., 210, 226;
Dos Passos, Stock Exchanges, 13, 15.

"The purpose is not business, trade or profit, but the benefit and protection of its members as provided for in its constitution and by-laws."

Lafond v. Deems, 81 N. Y., 507, 514;
Albers v. Merchants' Exchange, 39 S. W. Rep., 473, 478 (Mo., 1897).

In People v. Chicago Board of Trade, 80 Ill., 134, 136, it was said: "This organization is not maintained for the *transaction of business* or for pecuniary gain. * * *It is not engaged in business, but only prescribes rules for the transaction of business.*"

Baxter v. Board of Trade, 83 Ill., 146;
Sturges v. Board of Trade, 86 Ill., 441.

So that, at most, the contract forming such an Exchange is an agreement among certain persons:

a. To establish a market and facilities for the transaction of business;

b. To codify the usages of the particular branch of business, and such reasonable regulations, as experience has proved to be proper or essential to its proper and successful conduct;

c. To admit such other persons as they may choose, possessing the prescribed qualifications;

d. To extend the privileges of their association to members only;

e. To terminate the privileges of membership upon violation of any of the prescribed rules;

f. To deal alone with their associates,and such other persons as conform to the prescribed rules, not, however, using any force, violence, or similar unlawful means to prevent others from dealing with other competitors, if they prefer to do so;

g. To inculcate fair and honorable dealing, and, by means of their facilities and rules,to increase the influence and importance of the market, to attract custom thereto, and induce an extension of its business, and, as a result, to benefit their own condition in life.

It is to be observed that the members individually compete with each other for the business which comes to the market, and that, individually and collectively, they must face the competition of rival markets and of all persons at the same market who are non-members of the Exchange.

Upon the plainest principles, and under all the authorities, there is not the slightest element of illegality in such a contract.

A Market Established.

a. To promote the establishment of a market for the transaction of business must be conceded to be a lawful purpose.

Grissell v. Bristowe, L. R., 4 C. P., 36, 53;
Maxted v. Paine, L. R., 4 Ex., 203, 218;
Duncan v. Hill, L. R., 6 Ex., 255, 266, 267;
Speight v. Gaunt, L. R., 9 App. Cas., 1, 21.

USAGES CODIFIED.

b. The codification of trade usages tends to produce uniformity and thus promote the orderly conduct of the business in question, which is a great benefit to the public.

Nickalls v. Merry, L. R., 7 H. L., 530, 546, 547;
Tompkins v. Saffery, L. R., 3 App. Cas., 213, 220, 227, 228, 232, 237, 238;
Grissell v. Bristowe, L. R., 4 C. P., 36, 48;
Connor v. Robinson, 2 Hill (So. Car.), 354, 358;
McMasters v. Pennsylvania R. Co., 69 Pa. St., 374, 378;
Goddard v. Merchants' Exchange, 9 Mo. App., 290, 296.

MEMBERSHIP A MATTER OF CONTRACT.

c. The right to admit and exclude persons has been many times adjudged. This right is absolute and beyond control.

White v. Brownell, 2 Daly, 329;
American Commission Co. v. Chicago Live Stock Exchange, 143 Ill., 210, 227-230;
Greer v. Stoller, 77 Fed. Rep., 1, 8;
McKane v. Adams, 123 N. Y., 609, 612;
Board of Trade v. French, 61 Ill. App., 349;
McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 19 N. Y. Supp., 206.

PRIVILEGES ARE INCIDENT TO MEMBERSHIP.

d. It necessarily follows that no person is entitled to membership or to any of the incidental or resultant privileges, against the will of the associates, or after having been suspended or expelled from the association.

"It is only an association of merchants dealing in the products of the country, who, solely for their own

convenience, provide a room where they meet to transact business. *They have a right to exclude all other persons from the meetings of the board, or to admit only such as they choose.*"

Metropolitan Grain Exchange v. Board of Trade, 15 Fed. Rep., 847, 849, 850, 851.
Bryant v. W. U. Tel. Co., 17 Fed. Rep., 825, 826;
Marine Grain Exchange v. W. U. Tel. Co., 22 Fed. Rep., 23;
Delaware etc. R. Co. v. Central Stock Yards Co., 45 N. J. Eq., 50; affirmed, 46 N. J. Eq., 280;
Horton v. Morgan, 19 N. Y., 170, 172;
Walls v. Bailey, 49 N. Y., 464, 473;
Wilson v. Commercial Tel. Co., 3 N. Y. Supp., 633, 636, 637;
Belton v. Hatch, 109 N. Y., 593;
Hyde v. Woods, 94 U. S., 523;
Board of Trade v. Nelson, 162 Ill., 431, 438.

The Exchange a Merely Private Body.

Such an association is not affected with a public use, nor can a court *enforce* the admission of a person to membership. When this bill was filed the Stock Yards were likewise private, and even if they are not to be so treated at the present day, in view of a Kansas statute of 1897, the constitutionality of which is now before this Court, and if a change of their legal status subsequent to the institution of the suit can be considered at all, in the absence of a supplemental pleading, this does not make *the Exchange a public body*, nor charge its *members with a public duty*. The parties are wholly distinct, so far as the present case is concerned. (Stock Yards Co. v. Mallory etc. Co., 157 Ill., 554, 562.)

"It does not follow that dealers resorting to said market for the purposes of trade would be subjected to

similar rules of public policy. They would deal with each other merely upon the footing of private parties, owing each other no duties except those which the rules of honesty and fair dealing impose. *Each would be at liberty to deal or decline to deal with each other precisely as he might see fit.* The rules of trade would be no different from what they are in other markets, whether public or private."

American etc. Co. v. Chicago etc. Exchange, 143 Ill., 210, 236;

Transportation Co. v. Parkersburg, 107 U. S., 691, 699.

This body can only be transformed into a public one by *legislative* action; not by the exercise of the judicial function.

Express Cases, 117 U. S., 1, 26, 29;

Little Rock etc. R. Co. v. St. Louis etc. R.Co., 41 Fed. Rep., 559, 569.

It follows, necessarily, and as a self-evident corollary, that it is not unlawful for the associates to decline to have business intercourse with expelled or suspended members, or with competitors, who conduct their business in violation of the rules of the Exchange, or who refuse to become members thereof, and whose action, therefore, marks not only the ordinary efforts of a trade rival but also a warfare upon the rules themselves and against the Exchange as a whole.

The law has been taken to be so settled; certainly since 1794, when Lord KENYON, in a discriminating opinion, held that an agreement between persons engaged in mercantile pursuits, for their mutual protection, was not only free from criticism on the score of public policy, but properly regarded as beneficial to the development of commerce. *Such agreements are offers to the public to serve them on the terms prescribed.* By employing a member a contract according to such terms results. Being engaged in private pursuit, the associates were free to serve or not, and this necessarily

carried the right to fix *the terms* upon which alone their services could be had. And it was quite as competent for *a member to agree* in these respects as it was for an individual to act on his own account.

Kirkman v. Shawcross, 6 T. R., 14, 16, 17;
Ladd v. Southern Cotton Press Co., 53 Tex., 172, 193;
Delaware, etc. R. Co. v. Central Stock Yards Co., 45 N. J. Eq., 50, 59–62; affirmed, 46 N. J. Eq., 280;
State *ex rel.* Attorney-General v. Smith, 114 Mo., 188, 199, 200.

As to members of such an association, "there are mutual advantages and the duty (to observe the rules) is but the equivalent for the benefits."

Player v. Vere, T. Raym., 324, 327;
White v. Brownell, 2 Daly, 329, 341;
O'Brien v. Grant, 146 N. Y., 163, 173.

It has been shown that Exchanges, from time immemorial, have been accorded the highest possible praise as agencies for the promotion of trade. Except for a brief period during the first frenzy of the French Revolution, they have, in every civilized land on the globe, been fostered by all departments of Government and the recipients of the plaudits of political economists and of the general public. The courts have assigned them a status in the law of the land which harmonizes and effectuates what is recognized as a commercial necessity. The resulting public benefits are so great that it cannot be fairly said that they are, in the important respects here involved, to be subjected to abstract rules announced in cases of combinations which have at various times been adjudged or assumed to be fraught with danger to the public welfare.

The circuit court, while recognizing (but only to a limited degree) the advantages to the public of Exchanges, felt constrained to adopt the contention of counsel for Greer, Mills & Co., who prepared the briefs

there submitted on behalf of the Government, that the recent case of United States v. Trans-Missouri Freight Association, 166 U. S., 290, was decisive of the proposition that *every association* of persons engaged in trade or in exercising an occupation as to their wages or commissions, or providing for business non-intercourse with given persons, *was necessarily and conclusively unlawful.*

In our judgment, there is nothing in the points actually decided in the Trans-Missouri case which warrants the conclusions expressed in the opinion of the circuit court, and the cases are clearly distinguishable. However, it is proposed to be shown that under any view which can legitimately be taken of that case, the action of the circuit court in the present instance was erroneous.

VII.

The Trans-Missouri Case, 166 U. S., 290, and its Bearing in the Present Instance, Considered.

In approaching a consideration of what is said in that opinion, it is important to remember the cautionary rule that, in determining the scope of a judicial deliverance, in its application to subsequent cases, the *precise facts* of the particular case in hand are to be carefully kept in mind. Detached passages of the opinion are not to be torn from their context, nor general expressions, which, taken by themselves, may be susceptible of a given construction, to be extended beyond the case then actually under consideration.

Cohens v. Virginia, 6 Wheat., 264, 399;
Hans v. Louisiana, 134 U. S., 1, 20;
Plumley v. Massachusetts, 155 U. S., 461, 474.

A striking application of this rule is found in comparing the opening sentences of Mr. Justice Bradley's dissenting opinion in Chicago etc. Railway Co. v. Minnesota, 134 U. S., at 461, with the remarks of the

Court concerning that opinion in the subsequent case of Budd v. New York, 143 U. S., at 545, 546.

Hence, in order to fairly apply what is said in the Trans-Missouri case, 166 U. S., 290, it is to be constantly borne in mind that the Court was dealing wholly with the status of railroad companies under the Act, and that the matter involved was the validity of a traffic arrangement concerning what was confessedly interstate commerce. In view of Mr. Justice PECKHAM'S thorough familiarity with the existence and rules of Commercial Exchanges and similar organizations, as shown by the cases decided during his service as a member of the New York Court of Appeals, and the similar knowledge which Mr. Chief Justice FULLER had gained during his extended practice at the Chicago bar and from his consideration of Sparhawk v. Yerkes, 142 U. S., 1, and the information which the other concurring Justices undoubtedly had concerning the existence of similar organizations in the cities at or near which they had resided in past years, or in which they had held court while circuit or district judges,—(Mr. Justice HARLAN in Cincinnati and Louisville; Mr. Justice BREWER in Kansas City, St. Louis, Omaha, St. Paul, and Minneapolis; and Mr. Justice BROWN in Detroit and Toledo),—it is impossible to believe that they meant that case, or any language employed in the opinion, to be applied to a typical American Exchange.

This is particularly true and clearly proved by the statement repeatedly made in the majority opinion that unless the Act applied to railroads, there was "*little for the Act to take effect upon*" (313), and, in that event, "*the whole Act might as well be held inoperative.*" (326). And yet it needs but a moment's reflection to appreciate that the interests to be affected by destroying the Exchanges of the land are probably *even greater* than those involved in traffic arrangements between railroads. The volume of business done on and by means of Exchanges not only largely exceeds the aggregate of

freight rates, but the value of the transactions there carried on is probably greater than that of all the freight transported by the railroad companies of the United States.

So far as that decision fairly has application to the case at bar, it decides:

a. The Act has no reference to any contract or combination between persons unless those persons are engaged in interstate commerce, nor unless the business in which they are engaged falls within the definition of "*commerce itself*," in distinction to being a mere *aid to commerce* or having only an *incidental or indirect effect thereon;*

b. While the language of the Act is general and is not to be limited to contracts which were in unlawful restraint of trade under common law rules, yet not every contract affecting or relating to trade is condemned. In every instance the Court must find that the contract in question, "*by its direct effect*, produces a *restraint* of trade," in the sense of inter-state commerce, (312, 313). This element is particularly important because asserted by way of a *proviso*, and that, too, in a vital paragraph of the opinion. Beyond all doubt, the Court intended to carefully exclude from the effect of its rulings all the many instances of personal services, and of other facilities to commerce, which had been so often adjudged to be "aids" to commerce, and of *benefit* thereto, and as not being obstructions, impediments or restraints, as disclosed by the cases herein cited, running from the auctioneer instanced by Mr. Chief Justice MARSHALL, through the list of decisions concerning brokers, wharfs, and artificial canals, locks, and dams, announced from time to time, down to the grain warehouses considered in Budd v. New York, 143 U. S., 517, 545. This is especially true because the Court had but very recently laid it down, in the most emphatic terms, that if a given arrangement had the effect to *promote and facilitate* the transaction of business, it could not be said

that Congress had intended to inhibit it. For "commerce, in its largest sense, must be taken to be one of the most important subjects of legislation, and an intention to *promote* and *facilitate* it, and not to *hamper* and *destroy* it, is naturally to be attributed to Congress."

Texas & Pac. Railway v. Interstate Com. Commission, 162 U. S., 197, 218, 219;

c. Where the contracting parties are charged with a *public duty*, as railroads are, it follows that it is a correlative right of the public that they shall not enter into contracts with others engaged in the same business affecting the discharge of that duty. But where the business is *merely private*, the inquiry is one of fact: Does the particular contract *actually* restrain trade? As said by Judge SHIRAS, in the quotation made from his opinion by the Court, in accordance with the distinction firmly established, a century before, in Kirkman v. Shawcross, 6 T. R., 14, 17, "the same test is applicable to both classes of business and corporations in determining the validity of contracts and combinations entered into by those engaged therein." (336.) This thought was again expressed by Judge SHIRAS in this language: "Touching contracts between private parties in regard to pursuits essentially private in their nature, the test of validity we thus find to be the *actual effect* thereof on the public welfare." (58 Fed. Rep., at 86.)

These views of the opinion of the Court in that case are, as we submit, emphasized by these considerations:

The common law rule that courts would not lend their aid to enforce given contracts because they were in restraint of trade rested upon considerations of *public policy*. It is now conclusively established that such contracts were not illegal, in the sense that it was criminal to make or perform them. As public policy dictated the rule in the first instance, it necessarily followed that

the rule itself shifted with the view which the courts took of that policy under varying conditions. Hence it was, that in the course of time many contracts were declared to be binding and were affirmatively enforced which previous cases would have denounced. In England, the tendency outlined by Lord LANGDALE, Sir GEORGE JESSEL and Lord Justice JAMES formed the basis of Mr. Justice FRY'S great judgment in Rousillon v. Rousillon, 14 Ch. Div., 351, and of Mr. Justice CHITTY'S opinion in Badische Fabrik v. Schott, 1892, 3 Ch., 447, and the rules there announced have, after a masterly examination of the subject, become finally and authoritatively established.

Maxim–Nordenfelt Gun Co. v. Nordenfelt, 1893, 1 Ch., 630; affirmed, 1894, App. Cas., 535.

The luminous opinion of Mr. Justice BRADLEY in Navigation Co. v. Winsor, 20 Wall., 64, largely influenced the adoption of an equally liberal rule by the American courts—a view which is now accepted law.

Gibbs v. Baltimore Gas Co., 130 U. S., 396;
Fowle v. Park, 131 U. S., 88;
Diamond Match Co. v. Roeber, 106 N. Y., 473;
Leslie v. Lorillard, 110 N. Y., 519;
Tode v. Gross, 127 N. Y., 480.

It had become established that there was no hard and fast rule on the subject, but that each case, as it arose, should be determined by an inquiry whether the restraint in question was reasonable, the particular circumstances considered.

Until this Court determined the Trans-Missouri case, all the judges who had been called upon to consider the Act of Congress of July 2, 1890, had decided, or assumed, that contracts which were not open to objection on the score of being in unreasonable restraint of trade under common law rules, were not violative of the Congressional enactment. The construction put upon the statute by this Court proceeded upon the con-

clusion that the common law rule on the subject *did not in any way enter into the legislative intent.* Assuming that this conclusion is to be adhered to, it necessarily follows that the statute must be taken to have cleared away *all the common law rules* on the subject. It cannot be said that Congress intended to invalidate every contract which a common law court would have declared to be in restraint of trade, though valid because the restraint was reasonable, and, also, to declare all contracts to be thus in restraint of trade which the English courts, possibly centuries ago, would have held or assumed to be in such restraint, though, perhaps even then, valid because not unreasonably so.

In other words, there is nothing to warrant the construction that in the last decade of the Nineteenth Century, an American Congress intended to adopt the doctrine of *a constructive restraint of trade* which is outlined in some of the earlier English cases, under the influence of a public policy long since swept away by advancing civilization, and which has been overthrown ever since Mitchell v. Reynolds was decided by Lord MACCLESFIELD in 1711, (1 P. Wms., 181). Followed to its logical conclusion, such a construction would reinstate the passionate and somewhat profane declaration of HULL, J., in Dier's case, nearly six hundred years ago (1415). It would put Congress in the attitude of having adopted a rule of action and a public policy in respect of matters of commerce which stand forth in history as *relics of the Dark Ages*, and which are regarded as marking a time when *a languishing trade was vainly struggling for a foothold.*

It was not until her public policy, and her judges as expounders thereof, had yielded to a recognition that freedom of trade meant as well *an absence of artificial restrictions imposed upon the liberty of contract by judicial construction*, that England began that progress in matters commercial which has justifiably become the proudest boast of her people, and which it has been

and is the chiefest aim of other civilized countries to emulate. It would be absurd beyond expression to say that although in point of fact a given contract was intended to and did *actually promote* trade, yet the Act of Congress denounced it, because a long-since obsolete rule of the common law would have adjudged the same contract to be *constructively* in restraint of trade, though, perchance, nevertheless, valid.

One of Lord ERSKINE'S greatest achievements was that, in Lord George Gordon's case, he "successfully combatted the doctrine of *constructive treason*, a doctrine highly dangerous to the *public freedom*," and one which he trenchantly characterized to be "an abundant source of that *constructive cavil*." (1 Erskine's Speeches, by High, pp. 85, 91).

Speaking of a similar subject Mr. Curran, (Johnson's case, Curran's Speeches by Callaghan & Co., 1877, p. 590), used this fervid language: "*The same wild and impious nonsense* of constructive criminality—the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity."

If every agreement between two or more persons concerning the *manner* in which their occupation shall be carried on, or the compensation which they are to charge for their services, is intradicted by the Act of Congress, than an ordinary partnership between commission merchants, attorneys, physicians, architects, engineers, or persons engaged in any other occupations, (and as to all of these the element of interstate commerce may be quite as conspicuously present as it is in the case in hand), must likewise be declared to be unlawful.

Suppose that two persons who had been engaged in the business of live-stock commission merchants, each for himself, should conclude that by forming a partnership, their expenses for office-rent, salesmen, solicitors and other employes, telegrams, postage, etc., would be greatly reduced, and they be otherwise benefited, and

should accordingly stipulate in their articles of copartnership, for the express purpose of earning the largest possible income at a minimum outlay, as to the rates of commission to be charged, the number of solicitors to be employed, and the sending of prepaid telegrams, would the arrangement be a combination or conspiracy in violation of the Act of Congress?

An affirmative answer would, in effect, destroy fully 95 per cent. of the mercantile establishments in the United States. No one would have the hardihood to insist that such a construction of the Act embodied *effectuation of the legislative intent.* Beyond all doubt such arrangements would be upheld, and for reasons not difficult to appreciate:

a. They have existed so to such an extent and for so long a time, as to be universally known, and experience has proved them to be *promotive of trade,* and, therefore, *beneficial to the public.* Hence, Congress cannot be presumed to have intended to transform the associates into criminals and to subject their capital invested to forfeiture, by a mere general declaration, nor by any language short of an explicit and unequivocal provision describing them in express and unmistakable terms.

b. The statement that the common law rule on the subject of contracts in restraint of trade, has not passed into the Act of Congress, logically means that *no part* of it has a place in the construction of the statute. If *one branch* of the common law rule—an integral part of a complete judge-made codification of the rules of public policy on the subject—has been displaced by Congress, the statute must be looked to as a *full* substitute for the previous law on the subject. There is nothing to indicate an intent to adopt *part*, but *not all*, the common law doctrine in the premises. If it be held that the doctrine of reasonable restraints of trade has been eliminated, it necessarily follows that *an entirely new rule has been evolved.* The generality of the

language of the statute is such that its adjustment to existing conditions must be by way of judicial construction, in the light of established canons. Among these are, 1, absurd, unjust, and unreasonable consequences must be avoided; 2, an intention on the part of Congress to promote and facilitate commerce and not to hamper or destroy it, must be assumed; 3, general expressions must be limited so as to exclude such matters as cannot be presumed to have been intentionally legislated against; and, 4, this is a highly penal statute, and great liberality is, therefore, to be indulged in the effort not to condemn the innocent or praiseworthy: the spirit and not the letter is to be regarded.

THE ACT ONLY APPLIES TO CONTRACTS AND ASSOCIATIONS WHICH ARE ACTUALLY INJURIOUS TO TRADE.

In short, the Act being intended, (as declared in its title) to "*protect*" trade against restraints, it is first to be ascertained whether the particular contract is such that trade needs to be protected against it. Trade, as well as an individual, does not seek to be shielded from that which is *beneficial;* on the contrary, it naturally desires to enjoy every possible benefit and advantage, and will doubtless strive to further a tendency to bestow the same, in every conceivable way.

State *ex rel.* Attorney-General v. Smith, 114 Mo., 180, 197.

When the question arises whether a given agency or association of persons is injurious to trade—inimical to its development—courts look in the first instance to the history of commerce, in order to ascertain what influence has been thereby exerted in the past; whether the effects have been beneficial or baneful, the purpose good or evil; and what views have been taken in the premises by courts, legislative bodies, departmental

officers, political economists, and others proper to be regarded as speaking the intelligent conclusions of a commercial people. If this investigation and a consideration of other relevant matters shown by competent proof, or of such general knowledge that they fall within the range of judicial notice, establish that the agency or contract in question is, on the whole, *promotive* of trade or *beneficial* to its proper conduct, it cannot logically or truthfully be said that it *restrains*, *i. e.*, *interferes with or injures*, trade. There is, in that case, no room for applying a doctrine of *constructive* restraints.

Nor can it be held that Congress intended trade to be *protected* against that which is to its promotion. Such a ruling would be to deny to trade the right to have those advantages which have been evolved, from experience and even from necessity, for the purpose of facilitating its exercise and development. With due deference, it would be the height of absurdity to say that under the guise of protecting trade from injury, it is to be deprived of the benefits of arrangements which the common sense of mankind and the universal experience of history have shown to be both proper and essential to its orderly conduct and full development. For "*prohibition of trade is destruction to trade*"—(*In re* Rebman, 41 Fed. Rep., 867, 875).

The conclusion must be that when such an agency is brought under judicial review, it can be condemned only upon proof, that *in the given case*, it is, in point of *actual fact*, *injurious* to trade, (ERLE, J., in Hilton v. Eckersley, 6 E. & B., 46, 58, 59; Curtis v. Gokey, 68 N. Y., 300, 304). Of course, the injury may appear from the admissions in the pleadings or on the face of the contract. But unless it so appears there must be proof of the fact that trade is *actually* (in distinction to *constructively* or *theoretically*) restrained. A mere contract between persons engaged in trade is not conclusively, nor even presump-

tively or *prima facie*, in restraint thereof. (Lord ABINGER in Lewis v. Davidson, 17 L. J., Ex., 78, 79.) Self-evidently, many contracts are highly promotive of trade. Indeed, without contracts, there could be *no trade;* for all trade consists of *a contract in some form.* If the contract in question constitutes a usual incident of trade, or evidences a mode of carrying it on which is sanctioned by the consensus of mercantile experience and opinion, why deny its validity? (L. R. 10 Ex., at 353; L. R. 4 C. P., at 48, 53; 2 Hill So. Car., at 358.) The Act under consideration only denounces it when it has been found, as other issues are adjudicated, that trade is, *in point of actual fact*, restrained, and consequently subjected to an injury from which the public requires to be protected. (Attorney-General v. North Jersey St. Ry. Co., 54 N. J. Eq., at 267.) It would be as novel, as it would be detrimental to trade, to say, under the plea of protecting it from *injury*, that it shall be denied that which, in truth, is to its *advantage*.

Accordingly, we think that the emphasis in the Trans-Missouri case, in so far as it is to be treated as laying down general rules, is to be placed upon the statements in the opinion that a contract is to be condemned under the Act of Congress when (*and only when*) "such contract by its *direct effect* (i. e., *actually*) produces a restraint of trade," (166 U. S., at 312, 313), and that the Act applies only to "those contracts which *in fact* restrain or may restrain trade." (328.) Strong support is given to this view by the implied concession that a contract of sale, accompanied by a covenant on the part of the vendor not to engage in the same business would not be "within the letter or spirit of the statute in question." (329). The reason for this admission, be it stated as it may, is decisive of the present controversy; for certainly, the law of 1415, as expounded by Justice HULL, would have invalidated such a covenant on the part of a vendor.

We submit and insist that the rules of the defendant

Exchange are valid, whether they be judged by either of the elaborate opinions delivered in that case. For it will appear that in their effect on trade or commerce, Exchanges are and always have been promotive thereof. They do not restrain it, in intent or in fact, and never have done so. An Exchange, as such is not engaged in any business whatever, and usually (as here) its members are merely *exercising an occupation*, in distinction to being *engaged in trade or commerce*. That competitors are restrained *in their efforts to successfully compete*, has not been deemed to be in restraint of *trade* (as distinguished from traders) by any well-considered definition, unless unlawful means are resorted to—such means as mark the advent of a conspiracy to use force, intimidation, or the like.

This is nowhere more clearly recognized than by Lord ESHER, in his dissenting opinion in Mogul S. S. Co. v. McGregor, 23 Q. B. D., 598. With manifest reference to Reg. v. Rowlands, 5 Cox C. C., 460, and 17 Q. B., 686, *n.*, and similar cases in which the right of persons engaged in a private occupation to associate for their mutual advantage was conclusively established, the learned Master of the Rolls was careful to say that "the head of the law which we are considering *applies only to trade and traders*" (23 Q. B. D., at 609), which is "*perfectly distinct*," especially in this respect, from that which governs where an *occupation* is involved. (Lord ELDON, 18 Ves., 437; Queen Ins. Co. v. State, 86 Tex., 250).

Live-stock commission merchants are "*not buyers and sellers*, but factors—*agents to sell*."

Union Stock Yards Bank v. Gillespie, 137 U. S., 411, 415.

And "the rules of an Exchange are merely machinery to bring the two parties (principals) together."

Bowring v. Shepherd, L. R., 6 Q. B., 309, 327; Fowler v. Gold Exchange Bank, 67 N. Y., 138, 142.

ALL ASSOCIATION IS NOT NECESSARILY UNLAWFUL.

Since the preparation of the principal brief this Court has substantially sanctioned the correctness of the contentions therein urged anent the Trans-Missouri case (pp. 208-214.)

Hyer v. Richmond Traction Co., 18 Sup. Ct. Rep., 114.

It was there held that association is not, of itself, a combination condemned by considerations of public policy, for, otherwise, partnerships and corporations would necessarily be criminal. Where the fact of association, the purposes thereof, and the terms of the agreement reached, are published to the world, illegality can only be adjudged upon proof of *actual injury* to the public. The doctrine of *constructive wrongs* (quoting from Kearney v. Taylor, 15 How., 494, 520), "is too narrow and limited for *the practical business of life*, and would oftentimes *lead inevitably to the evil consequences it was intended to avoid.* Instead of encouraging competition, it would *destroy it.*" Each case must depend upon its own circumstances, and every instance involves an inquiry of *fact*: Whether the particular contract or arrangement was *intended to accomplish such injury*, or whether that be its effect or *necessary* tendency. Where the matter affected is not one which *must, perforce, take place*, (such as a judicial or foreclosure sale), but depends upon contract to be entered into between man and man, entirely different considerations apply, a distinction somewhat akin to that between matters and things affected with a public use, and merely private occupations (18 Sup. Ct. Rep., at 117, 118).

That the analogy of partnerships and private corporations thus instanced, and also urged at page 209, *supra*, is, *when viewed from the standpoint of considerations of public policy*, both perfect and complete, has been shown in a recent and well-considered opinion.

Smith v. San Francisco etc. R. Co., 115 Cali., 584, 600 *et seq.* (1897).

And Judge BRAWLEY, when Hyer v. Richmond Traction Company was heard in the circuit court of appeals, (80 Fed. Rep., at 846), aptly and forcibly drew the distinction that "a rule that might be justly applicable to a kind of business which could not be restrained to any extent whatever without prejudice to the public interest, ought not to be arbitrarily extended so as to interfere with *that freedom of contract which is a fundamental right.*"

The nature and scope of the *fundamental right* thus alluded to are admirably shown in the address delivered by Hon. James M. Woolworth as president of the American Bar Association, 1897, in this language:

"The declaration that all men are endowed with a right to 'life, liberty and the pursuit of happiness' is not satisfied by assuring an existence as animals, nor by freedom from physical restraint. That is the smallest part of their contents. Each by itself is a great word—*the greatest tongue ever uttered*. But one reflects its meaning upon the others, so that all of them coupled in one phrase encompass the exercise of all the faculties and capacities of men, so as to give to them their highest enjoyment. Thus, there are *the callings in life, trades and pursuits which have always been followed in all communities from time immemorial.* The right to pursue them, without let or hindrance, is an ingredient of happiness, without which, life is not worth living, nor liberty worth having. And then, furthermore, there is *the exercise of the faculties and capacities of men in complex, highly developed, industrial societies, which gives to them a vastly higher enjoyment;* as where men subdue the forces of nature to their service, and where they combine and *associate together for ends beyond the competency of individuals. These last as well as the former are the fruition of the liberty of American citizens which*

they claim as their birth-right. The object and justification of governments among men is to secure these rights *in full measure and proportion;* and any exercise of power, whether by edict of Emperor, decree of Parliament, or act of Legislature, which lays upon them *a burden of any sort,* is without *defense, apology, or excuse.*"

Proceedings, American Bar Association, 1897, pp. 241, 242.

In the case at bar, it is emphatically true that the employment of one of the defendants to act as a commission merchant, and the consequent obligation to compensate him according to the schedule under which he has declared himself to be willing to serve, are matters of a purely private contractual nature. His rights are none the less sacred because his rate of wage is on the basis of the reasonable value of such services when rendered by a member of a "highly developed industrial society" under the safe-guards and aided by the facilities provided by its rules.

Thus, if a person owning property is desirous to sell the same because of his necessities, be they ever so pressing, an arrangement between two or more persons upon a price which they were willing to pay, would not, for that reason, be void, or, (if the transaction be interstate in its character), mark a violation of the Act of Congress. The result would not be changed because the property was such that it could be sold to best advantage at a given market, or only to a certain limited number of persons. For instance, if shares of stock were best (or even only) salable at some one place, the buyers doing business there would not, therefore, stand debarred from agreeing among themselves to bid thereon in common, or not beyond a named fair price; or, if the property were land, whose chief or only substantial value was because of its coal deposits, the persons engaged in coal mining in that district and who alone might be interested in purchasing the same, could not

be compelled to bid against each other, nor be denied the right to buy on joint account.

Even when a monopoly by royal grant came under consideration, it was laid down, more than three centuries ago, in a much argued and very important case, which has ever since been regarded as the leading one on the general question involved (11 Pet., at 606, 607), that "a monopoly is no immoral act, but only against the politic part of our law. If it happen to be *of advantage to the public*, as this trade is, then *it ceases also to be against the prohibiting part of the law*, and so not within the law of monopolies."

East India Co. v. Sandys, 10 How. St. Tr., 371, 518.

The Lord Chief Justice pointed out that from the earliest periods the crown had "granted the liberties of fairs and markets *for the sake of commerce and trade*;" for instance, the grant to the Abbot of Westminster to hold a fair each year, lasting thirty days, "with a prohibition that no man should buy or sell *within seven miles of that fair during that time*." And it was shown that the *public interest was much benefited* by recognizing and fostering such exclusive fairs and markets, because their effect was, "as Mr. Attorney-General did well observe, to prevent *frauds*, *deceits*, *and other abuses*, either in weights, measures or otherwise, which would certainly *interrupt such commerce*" (10 How. St. Tr., at pp. 523, 524).

Hyde v. Richmond Traction Company is not only supported by the cases cited, but by a large number of others, a late and strikingly parallel one being Oakes v. Cattaraugus Water Company 143 N. Y., 430, 438, 439.

The last mentioned case is entitled to particular weight because the New York courts have generally held views upon the subject which have elsewhere been regarded as unjustifiably extreme.

Breslin v. Brown, 24 Oh. St., 565, 571 and cas. cit.;

Greenhood, Public Policy, p. 191.

However, in a much considered case of the greatest importance, the Court of Appeals of that state distinctly ruled that agreements, even among persons intending to bid for the doing of *public work*, were not necessarily illegal. "They may be entered into for a lawful purpose and from honest motives, and in such cases may be upheld," approving, among others, Jones v. North, L. R., 19 Eq., 426. Such agreements are denounced only when, thereby, *unreasonable bids* were successfully made or some *undue advantage* obtained. Otherwise, they are regarded as innocuous and immaterial.

People v. Stephens, 71 N. Y., 527, 546, 547.

So this Court had ruled on a previous occasion that "the validity of such an arrangement depends upon *the intention* by which the parties are animated, and *the object sought to be accomplished.*"

Wicker v. Hoppock, 6 Wall., 94, 97.

In addition to the cases cited in Hyer v. Richmond Traction Company, *supra*, the following authorities support the conclusions there expressed:

Smith v. Ullman, 58 Md., 183, 190;

In re Carew's Estate, 26 Beav., 187, 189;

Holmes v. Holmes, 3 Rich. Eq., 61, 64, 65;

Smull v. Jones, 6 W. & S., 122, 126, 127;

James v. Fulcrod, 5 Tex., 512, 522-7;

Cohen v. Envelope Co., 9 App. Div. (N. Y.), 425;

Meredith v. New Jersey Zinc Co., 37 Atl. Rep., 539, 542, (N. J. Eq., 1897).

Indeed, it is upon an application of this principle that the courts so warmly commend Reorganization Agreements, especially where admission to the privileges thereof is offered to all qualified applicants.

Kropholler v. St. Paul etc. Ry. Co., 2 Fed. Rep., 302;

Wetmore v. St. Paul etc. Ry. Co., 3 Fed. Rep., 177, 184; s. c., 5 Dill., 531, 535, 536;
Pennsylvania Transp. Co.'s Appeal, 101 Pa. St., 576, 582.

Such agreements, although always calculated and many times directly operating, to constructively restrain a given degree of competition and the free action of the parties as independent factors, are yet deemed essential to the protection of the parties and to be promotive of the general welfare.

Robinson v. Philadelphia etc. R. Co., 28 Fed. Rep., 340;
Central Trust Company v. U. S. Rolling-Stock Co., 56 Fed. Rep., 5, 7.

In view of the contentions on behalf of the government in the present case, it is a pertinent inquiry whether such an agreement concerning an interstate railroad would be a violation of the Act of July 2, 1890. What argument can be advanced in favor of the typical Reorganization Agreement which does not apply with at least equal force to a Commercial Exchange?

And while an agreement fixing a table of wages has been deemed to stand upon a distinct ground of vantage, yet the principal arguments relied upon by the Government in the present case are readily overcome by the conclusions reached in respect of combinations even in reference to bidding at forced sales. To the extent that an analogy may fairly be drawn in the premises, the present case would, however, fall within the rule laid down in Morrison v. Darling, 48 Vt., 67, 71, 72, and declared to embody a "fundamental right," by Judge BRAWLEY, *supra*.

Thus, it was strenuously urged below that if the right to agree on *reasonable* commissions were conceded, it would necessarily follow that *extortionate* charges might, on the same principle, be lawfully fixed and exacted. This is not only a complete *non sequitur*, but

confuses the very distinction between an agreement free from injury to the public, *i. e.*, not operating to restrain or injure trade, and one whose real purpose is to obtain an undue advantage to the detriment of the public welfare (National Bank v. Sprague, 20 N. J. Eq., 159, 169). The former has for its objects, to regulate the *orderly conduct* of the occupation in question; to secure *uniformity*; to avoid *discriminations*; and to promote the *development* of the industry referred to, none of which can or do result injuriously to the public, or to trade and commerce. The latter would present the elements which are essential to a conclusion that public policy had been offended: an *undue advantage* gained; *oppression* practiced; and an *injury* inflicted upon the public interests.

Phippen v. Stickney, 3 Met., 384, 388, 389;
Marie v. Garrison, 83 N. Y., 14, 28.

The suggestions of the Government in this behalf rest upon a purely speculative basis. There is nothing to justify the assertion that the rules of a single Exchange provide for a commission charge, as to the propriety or fairness of which there is the slightest room for doubt. No such apprehended extortion has been attempted in the past. Considering the circumstances, the purposes of these organizations, and that if such a folly were attempted, the members would inevitably and immediately be the greatest, and probably only, sufferers as a result, the possibility that such an apprehension will be realized in the future is too absurdly and inconceivably improbable to be made the pretext for destroying such bodies *in toto*, and at a time when they are making neither claim nor effort to do aught which offends in the slightest degree the sternest sense of public or sociological morality.

It was well said by Judge BRAWLEY, (Hyer v. Richmond Traction Co., 80 Fed. Rep., at 847),—and the statement is fully covered by the approval which this Court has given to his opinion in that case—that

"to hold a contract void because its tendency may be to defeat competition, it must appear that the benefit to be derived from it (*i. e.*, an undue advantage operating to the injury of the public), is *certain and substantial*, and *not theoretical and problematical*."

Whatever force the suggestion referred to might have if offered in support of the propriety of legislating so as to prevent *abuses* or *extortionate practices*, it lends no support to a demand for the *complete annihilation* of the right to form associations, however meritorious or innocent they may be. To forbid the *abuse of a privilege* is far different from *destroying the privilege itself*.

It was likewise insisted below that our argument that a schedule of *reasonable commissions* may lawfully be prescribed, was in effect, a contention that a contract in *reasonable restraint of trade* was not inhibited by the Act of Congress. It is not perceived that there is the slightest connection between the two propositions. Certainly, the use of the same adjective in each of them is merely a verbal coincidence.

Fairly stated, our proposition is that a schedule of reasonable commissions does not operate, and cannot operate, to restrain trade *in any degree whatever*. Clearly, the occupation and functions of a broker or commission merchant, as such, are not in restraint of trade. A contract with a principal to serve him in that capacity would not violate the Act of Congress. On the contrary, such agents and intermediaries are universally recognized as most valuable aids to commerce and as absolutely essential to its successful conduct. And, self-evidently, as this laborer is also "worthy of his hire," a contract to compensate him must be free from criminality. As mere association is not, *per se*, unlawful, how can it be said that injury to the public, or a restraint of trade, can result from *the mere fact* that the compensation for which the agent is willing to serve, stands prescribed by an honorary schedule embodied in the rules of an Exchange? If the rates thus fixed are

reasonable, can trade be said to be restrained thereby in any different degree than would result from an express agreement between principal and agent in each isolated instance? Such restraint or injury could only exist, at the very utmost, upon proof of the superadded element that *unreasonable charges* have been exacted under such circumstances of compulsion as to disclose extortion or coercion in the sense of duress as defined by the law.

To repeat, reasonable charges for services faithfully rendered—a fair compensation for an equivalent sought and received—do not operate to restrain trade *in any sense whatever*. The Act of Congress certainly did not intend to prohibit the continued exercise of this lawful occupation, without which there could, indeed, be no such thing as trade. It cannot be said that in order to escape the penalties of the Act of Congress and to avoid restraining trade, the occupation must be exercised *gratuitously!*

If, instead, of using the term "reasonable commissions," the statement be phrased that no more than a *fair compensation* is provided for, can it still be said that *such* a compensation *restrains* or *injures* trade? Or that the case is changed by the mode adopted to indicate the measure of that compensation?

In his great argument in Gibbons v. Ogden, Mr. Webster emphasized that "*useful regulation*" of commerce is far different from a "*restraint*" thereof—a distinction which is established, with direct reference to the question under consideration, by the greatest conceivable weight of authority (Brief, pp. 99 *et seq.*)

Even where the Government was offering vast tracts of land at public sale, the formation of a powerful syndicate, bound together by an agreement that no bids should be made beyond a named price, was adjudged to be free from illegality. It was held to be necessary to further prove *actual fraud* in manipulating the sale, or that, as a result of the combination, the

bidding was depressed to such an extent that *the property was sacrificed.*

Piatt v. Oliver, 1 McLean, 295, 301, 302; s. c., 2 McLean, 267, 277, 278, 281; affirmed, 3 How., 333.

And it has been repeatedly enjoined that great care should be taken not to confound agreements which are reasonable to the occasion and in fact advantageous to all concerned, with those fraught with injury or inspired by improper motives.

Gardiner v. Morse, 25 Me., 140, 143;
Smull v. Jones, 6 W. & S., 122, 126;
Smith v. Greenlee, 3 Dev., 126, 129;
Greenhood, Public Policy, p. 191.

When Competition is Beneficial.

It is also to be remembered that the competition in which the public can be said to be interested is widely different from that degree of *rivalry* which has for its sole or leading purpose a mere desire to defeat or injure a competitor. Indeed, an association to carry on such a rivalry would stand in danger of being condemned as a *criminal conspiracy*, *i. e.* a combination intended, proximately, to inflict injury upon another. Would it be criminal to agree *not to permit a conspiracy of this description to come into being?*

This inquiry points the middle-ground which marks the bounds of lawfulness: The competition which public policy requires to be observed is fully met (at least) when the prices bid, paid or charged (as the case may be) are reasonable, the circumstances considered, and when no improper practices are resorted to or undue advantages sought to be gained.

"There is a competition that *kills*, as there is a combination that *saves*" (80 Fed. Rep., at 847). A contrary doctrine "would be as pernicious as the evil

against which the true rule is intended to guard" (15 How., at 520; 18 Sup. Ct. Rep., at 117).

Breslin v. Brown, 24 Oh. St., 565, 570.

The greatest safety to the public—especially in matters of mere personal services—lies in a steadfast recognition of the conclusion expressed by a high authority, in turn quoting from one whom he characterized as a "widely experienced writer," that "competition to be effectual must be *constant*, *not fitful*, and be limited by a reasonable regard to the actual condition of the business; not inspired by *the wild avidity of the mere bandit*."

"Lloyds," 45 Fortnightly Review, at 537.

In short—to apply the illustration of counsel below—if the defendants should fix the manifestly unreasonable commission of five dollars for selling each head of cattle, who would be more seriously hurt than they themselves, by the inevitably resulting diversion of consignments to Chicago, St. Louis, Omaha, Fort Worth, and other competitive points? If the (it seems to us) ridiculously extreme and practically impossible case be put that *all* live-stock commission merchants throughout the United States might combine to insist upon a five dollar rate, how long would it be before sellers and buyers would make their bargains without the employment of an intermediary? How long before others would offer to serve at the reasonable rates now prevailing? How long before public sentiment would enforce a correction of the abuse? Who would suffer more, in the way of retaliation, than those who have thus sought to wrong the public? Unless, indeed, the Attorney-General, according to the precedent set in the present instance, will permit them to use the name of the United States to obtain an injunction restraining such persons as they may choose to make defendants from refusing to thereafter deal with them, singly or in concert, with or without reason, and mandatorily enjoining the defendants to have such dealings, *nolens*

volens, (*vide*, order here appealed from, Record, 277).

It would follow that by agreeing to ask a given compensation (even if the rate be ever so reasonable), A and B would be guilty of making a *contract* in violation of the statute; and by refusing to deal with them, C and D would become "boycotters," and as such guilty of a *conspiracy* under the same statute!

The Real Interests of the Public.

Taking the case as it is, and applying the experience of the past, the precise question is, which of the following alternatives shall be judicially declared to be in the interest of trade:

a. An association of reputable merchants, deeply concerned in building up and maintaining a market, not for mere temporary advantage but as a permanent benefit to all concerned; who recognize, as Ex-Secretary Carlisle once well said, that "Commerce is not war; it is peace"; a code of rules framed and improved from time to time with an eye-single to increasing facilities, inspiring a feeling of public confidence, and insuring the orderly conduct of the occupation under a high standard of commercial honor, relentlessly enforced; and a schedule of commissions affording no more than a fair compensation for efficient services faithfully performed, and protecting all from the intolerable evils of favoritism and discrimination; or,

b. A condition of commercial chaos and anarchy, in which the controlling ambition is to fleece the unwary, without hope of a second opportunity; when the least scrupulous may, by exercising "the wild avidity of a bandit," succeed in overcoming all competitors who are prosaic enough to be guided by considerations of commercial propriety and common honesty, and, having destroyed the market, be at liberty to enjoy his ill-gotten gains or to seek pastures new; where facilities and confidence are mere empty names; and under which

rebates are granted to the favored few at the expense of the many, inadequate commissions charged for equally inadequate service, and the loss incident to conducting an occupation for less than the *actual expense* incident to rendering faithful service (Record, 179, 180, 182), will, necessarily, be recouped by secretly taking advantage of the public in other respects.

It is for this Court to decide between the two, in the light of the great trust confided to it to effectuate a legislative intent to protect the trade of our great land and to conserve the welfare of the American people and their commerce.

The cases concur in holding that a wrongful purpose is not to be presumed; that the existence of the proscribed intent, effect, or necessary tendency involves an inquiry of fact; and that whether a given arrangement is beneficial or injurious, and whether it is in accord with or inhibited by public policy, (be that policy a matter to be declared by the courts or embodied in procrustean statutory enactments), can best be determined in the light of the actual results of its practical operation.

Phippen v. Stickney, 3 Met., 384, 388–9.

If that operation has been long continued and has affected a large number of persons and a great volume of business, it is the easier to judge of that result and the weightier the proof thereby disclosed. In short, as all American Exchanges have schedules of commissions fixed on the basis of yielding a fair compensation for services rendered, it can readily be determined whether the result has been detrimental to commerce. All must concede that, instead, trade has been and is being benefited. There is no subject upon which the universality of intelligent opinion is so wide-spread and pronounced; and this conclusion is entitled to the very greatest conceivable weight and consideration.

Interstate Com. Commission v. B. & O. R. Co., 145 U. S., 263, 279;

Hoover v. Penna. R. Co., 156 Pa. St., 220, 233, 243.

AUTHORITATIVE CONCLUSIONS CONCERNING EXCHANGES.

The citations and quotations already made on this subject (Brief, pp. 81, 82; 98–110; 114–121; 126–132, *et seq.*) are strongly corroborated by authorities which have more recently come under notice:

Nearly forty years ago, a discriminating contributor to the National Social Science Association of Great Britain,—a body which then carried upon its rolls the greatest names and profoundest learning of the Kingdom —reviewed the subject of Chambers of Commerce. After pointing out that at that period there were 25 of these bodies in England, 10 in Scotland, and 5 in Ireland, the Edinburgh Chamber having been instituted in 1786, Mr. Darlington summarized the general purposes of their organization to be "to promote measures calculated to *benefit and protect* the mercantile and trading interests of their members and of the district in which the society is formed, * * and of attaining such commercial advantages as the exertions of individuals may be less adequate to accomplish," (the very consideration which demonstrates that such an association is clearly not within the rule of illegality, 80 Fed. Rep., at 847). A review of their operations induced this conclusion: "One feels astonished at *the vast amount of good* which has been accomplished through their instrumentality, and perplexed to know *how it could have been possible* to watch over the trading interests of our hives of industry without the intervention of Chambers of Commerce. * * Few persons would now be found to dispute *the necessity* for them."

Transactions, National Social Science Asso., (London, 1858), p. 151.

The views thus expressed in England forty years ago are strongly confirmed and reinforced in a recently published history, under the editorship of Mr. Depew, entitled,

"ONE HUNDRED YEARS OF AMERICAN COMMERCE."

The chapter devoted specially to Commercial Organizations (pp. 50-54) bears the signature of Mr. Alexander E. Orr, whose great experience in mercantile affairs and long and useful service as President of the New York Chamber of Commerce, entitle his conclusions to be accepted as those of one who is endowed with the quality of authority. The preamble of the association under whose auspices this Court held its first session (Brief, p. 81), and which came into being under a royal charter, recited that "Mercantile societies have been found *very useful* in trading cities for *promoting and encouraging commerce, supporting industry*, adjusting disputes relative to trade and navigation, and providing such laws and regulations as may be found necessary *for the benefit of trade in general*" (50). The royal grant was promptly confirmed by the legislature of New York in 1784, and the body has had upon its rolls the names of public officers of the highest rank, including Presidents of the United States (51). Some of the more important patriotic services rendered by that organization, in connection with the many trading Exchanges of which it was the forerunner, are set forth (51, 52), and the conclusion drawn that to complete the sketch would be "largely *to portray the political, commercial, industrial, and financial development of the country* (52).

Succeeding the war of 1812, Exchanges were organized in various cities, and these "have done much towards *developing the industries, trade, and traffic* of their localities, as well as taking more or less active part in *promoting the general commercial welfare of the whole country*. But the commercial associations which are *the*

most numerous, and withal the strongest, are those founded by people who deal *in like things* in towns or cities, which are to some extent centers of particular callings, such as cotton in New Orleans, etc." (53), to which may well be added "and grain and live-stock at Chicago, Kansas City, and St. Louis." Illustrative of this class, the Chicago Board of Trade is favorably referred to (53). "To *facilitate the operation* of the great concentration of business (at the city of New York), it was found expedient to organize separate Exchanges and Boards of Trade, which, as time has passed, have grown into large proportions" (53). Referring to the more prominent of the *seventy* bodies of this nature in that city, these summarized statements are made: The New York Produce Exchange "possesses the finest Exchange building in the United States, and its business and influence are proportionally great in the line of its specialties. The Stock Exchange * * has given *great impetus to the development* of transportation in this country. The Cotton Exchange * * buys and sells more cotton for future delivery than any other Cotton Exchange either *at home or abroad.* * * The Coffee Exchange has lately grown into very great prominence, and now *surpasses* in the volume of its business that of Havre, France, which is believed to be *the largest in Europe.* The Mercantile Exchange * * now aggregates an enormous business" (53, 54).

The reviews of the respective rules and operations of these New York bodies in the principal Brief (pp. 81, 82; 140-150; 170-171; 172-176; 182-184), demonstrate that to affirm the order here appealed from will be to administer a death-blow to their continued existence.

The contention that such a result is demanded in order that *trade may not continue to be restrained*, and that the public welfare may be freed from the *injury* now being done by the existence and operations of these institutions, is completely overthrown by the conclu-

sions expressed in the final paragraph of Mr. Orr's contribution:

"Thus it will be seen that, starting with but four commercial organizations, of the character and scope outlined, at the beginning of the nineteenth century, their number at its close will have increased five-hundred fold. **What they have accomplished for the people of this country is simply incalculable.** *The record is found in our extensive manufacturing interests; in the products of the soil, forests, and mines; in our enormous interstate commerce; in our foreign trade; in our circulating medium and monetary institutions; and, finally* **in the unprecedented increase in National wealth, prosperity and development."**

"One Hundred Years of American Commerce," Vol. 1, p. 54.

Similar views were expressed by General Horace Porter, in reviewing the Commerce of the city of New York (61, 62), and are recognized, with more or less amplification, throughout the book. The views of leaders in practically every department of our commerce are there collated, and not a single hint or suggestion is to be found which lends support to the contentions of the Government in the present case. Considering the circumstances, this silence is extraordinarily significant.

In dealing with the subject of "Wall Street," Mr. John P. Townsend, President of the Bowery Savings Bank, (probably the largest institution of its kind on American soil), incidentally referred to the circumstances which led to the formation of the Merchants' Exchange of 1795, (p. 68), and noted that "brokers who bought and sold for others on commission could (then) be found as easily as at the present time" (68-69). Mr. Townsend corroborates the account of the origin of the New York Stock Exchange by means of the informal agreement of 1792, which is set out on p. 146 of the principal Brief, and reprinted

in his article (69). He concludes his sketch of the history of that body with these statements: "Its functions are as vital to the *development and prosperity of the country* as to the money market. It affords a *constant and regular market* for the securities of the great corporations and indexes their value in quotations of *actual* sales and bids. * * The door would be open *to manipulation and fraud almost unlimited were the safeguards it affords to be removed.* The Stock Exchange, it is true, cannot control *the relation of value to prices*, but *it can and does secure a fair, free and absolutely open market*, where the dealings are matters of record and public knowledge. * * In the exercise of these functions the Stock Exchange has come to stand as *the great regulator of the market for securities*, and its transactions, fully reported, serve as the standard by which values are established. In the internal economy of the Stock Exchange *every method best adapted to conserve the ends of straightforward and legitimate business investment has been adopted.* * * The publicity the Stock Exchange thus allows to all transactions, the centralization it affords to the great interests of the country, and the *regulations it imposes upon all operations*, are among *the greatest advantages* it confers" (70, 71).

So, Mr. John W. Nix, a leading merchant in that branch of commerce, in treating of the Fruit Trade, said: "The many opportunities that *irresponsible dealings*, in consequence (of the perishable nature of the article), offer *for fraud*, have led the trade of New York, and every other great center as well, to establish *certain safeguards* and to seek in organization to combine *the better elements against questionable methods.* Among the larger and better known of these organizations are the New York Fruit Exchange, operating on the same principle as the other great Exchanges; the Fruit Buyers' Union, which aims to regulate the green-fruit import and auction business so as to render corrupt prac-

tices impossible; and the National League of Commission Merchants, the aim of which is to secure *uniformity and integrity of method* in the commission business" (vol. 2, p. 606).

Incidentally, it is to be noticed, in view of the effort below to sneeringly belittle the value of the quotation concerning Clearing Houses, which is made on page 131 of the Brief, by reason of its appearance in a current magazine, that in "One Hundred Years of American Commerce," Ex-Governor Morton and Mr. Townsend make precisely the same statements (pp. 6, 72).

A brief reference to convenient data, not already reviewed, will demonstrate how far Mr. Orr's conclusions have application to the situation and association under consideration in the present instance, and to what extent the rules and operations of the defendant Exchange have *restrained trade* and *obstructed commercial development* in the field over which the influence of that body has extended.

In Cotting v. Kansas City Stock Yards Co., 82 Fed. Rep., 839, 841, the total receipts of live stock at the Kansas City yards for 1896 were judicially found to have reached the enormous aggregate of 5,471,246 head!

The record in the pending case (p. 127) shows that in 1872 (the first full year during which the yards were open for business), the total receipts were 350,160 head, and that in 1886, the year prior to the formal organization of the Exchange and during a period of great general prosperity, the receipts were 2,961,303 head. This shows an *increase* of fully *eighty* per cent. in number under the operations of the Exchange, (1887-1896) in spite of the intervening years of business depression and of the establishment of competing markets at other points throughout the West.

The record (p. 127) also shows these facts with

reference to the *value* of the shipments during the years above referred to:

In 1872	$ 9,175,071.
" 1886	35,340,150.
" 1896	103,402,298.

So that since the present Exchange was formed in 1887, the shipments to Kansas City have not only nearly doubled *in number*, but *the proceeds realized have increased nearly three-fold!* This, too, when in respect of the population of that city, there has been a merely nominal, if any, increase during the same period.

The Cotting case also discloses that:

a. Of the live-stock sold at the Kansas City Stock Yards in 1896, more than *seventy* per cent. originated in Kansas or Missouri, and nearly *eleven* per cent. in the Territories; and,

b. Although about *forty* per cent. of the total receipts had been shipped with the privilege of stopping over at Kansas City and of testing the market there, the defendant Exchange so affected trade that *ninety* per cent. of these forty per cent. were in fact sold there, and not reshipped (82 Fed. Rep., at 841, 842).

In 1896 the Stock Yards Company also issued, for *general circulation* and information, an illustrated report and bulletin, embodying the data already referred to and other matters deemed to be of interest to patrons.

In the Cotting case, 82 Fed. Rep., at 848, it was found that the present Live Stock Exchange Building, which, it will be remembered, belongs to the Stock Yards Company, cost $250,000. A representation of it appears on page 2 of that Company's 1896 Illustrated Bulletin. A comparison with the buildings used for Exchange purposes from 1871 to 1876 (p. 12), and in 1887, when the present association (which was, however, informally brought into existence in 1876) was permanently organized (p. 10), will demonstrate an instructive object-lesson. So, too, light is shed upon the issue here involved, by comparing the

stock-yards of 1871 (p. 18) with those of 1896 (pp. 16, 17) and the adjuncts shown on pp. 20, 22, 24 and 14.

That pamphlet was manifestly prepared without reference to the litigation to which that Company became a party by reason of the subsequently enacted Kansas Statute, considered in the Cotting case, and certainly with no intent to influence the present suit. It is to be noted that the data bearing upon the last week of December were "estimated" (p. 13), and that the present bill was not filed until the last day of that month (Record, 14). Hence, what is there said concerning the Exchange possesses, at least, the attribute of *disinterestedness*. It is, however, entitled to even greater consideration because the interest of the Stock Yards Company being to *attract* the very largest possible number of consignments and purchasers, it would be the *very first* to know whether the Exchange was *restraining* trade or in any way *obstructing* the flow of commerce, and no doubt be loudest in its objections to that body and in its demands for its speedy dissolution. As the rentals collected from the members of the Exchange constitute but an insignificant part of the annual gross earnings of the Company,—which, in 1896, aggregated $1,023,870.20 (82 Fed. Rep., at 848),—any suggestion that a desire to retain tenants dominated the Annual Report under consideration, is at once dispelled; especially, as the theory of the present suit is that a dissolution of the Exchange would increase the number of tenants and thereby augment the income of the landlord from that source.

The conclusions expressed by this Company in respect of the matters under consideration here, are, consequently, entitled to careful consideration:

If shippers "wish to save the commission charge, there are *no restrictions* and *no expense* for selling their own stock on the market—the popular belief to the contrary notwithstanding" (25). * * *

"The Kansas City Live Stock Exchange is an as-

sociation organized, not for the purpose of pecuniary profit or gain, as is generally supposed, but *to promote and protect all interests* connected with the buying and selling of live stock at this market. Membership in it is not compulsory, but represents a privilege, the basis of which is to enforce amongst its members *safe*, *legitimate*, and *high moral principles* in the transaction of business. It would be preposterous to think of transacting the immense volume of business at this market at this time without *some common understanding*, *some systematized plan*, *so plain that all can understand*, *so just as to commend it to all engaged. The necessity of it was made plain in the early history of the business.*" An account is then given of the difficulties encountered and of some of the wrongs practised in the absence of the Exchange, which concludes thus: "Last, but not least, the farmer, feeder, and shipper were entirely *at the mercy of unscrupulous and unsystematized business methods.* It was plain that he needed the protection of knowing what *it would cost him* to have his stock fed, watered, weighed, and sold or bought. He needed honest weighing and straight, legitimate sales. He required not only speedy and correct returns, but to be sure of his proceeds. *This chaotic condition of evils and abuses*, from which *all interested suffered* to a more or less degree, *made the necessity of an organized body such as the Kansas City Live Stock Exchange.* In the formation of its rules and bylaws, all *the stated evils have been cured*, and the vast interests of this market under its control are transacted in such a *just and legitimate manner as to satisfy all vitally concerned.* * * It is a business association of all interests represented, with an eye-single to systematizing the business at these yards on a basis of just and high moral principles" (25–27). * *

"With the development of the live stock interests of the West has arisen *the absolute necessity* of reliable

and honorable middlemen, or commission firms." * * All the recited requisite and desirable qualifications "our Kansas City live stock commission merchants have, and *shippers generally agree that their services are worth many times what they cost*" (27–29).

Of the 300 members of the Exchange, 192 were engaged in business as commission merchants, and the 90 firms (allowed, under section 10 of Rule IX., to employ *three solicitors each*) voluntarily contented themselves with 82 such agents (21).

This general characterization of the defending Exchange is strongly supported by the detailed report of the Royal Commission of 1877–8, which, since the preparation of the principal Brief, (on pp. 107, 108 of which the general conclusions of that eminent committee are set forth), has been found to be printed in full in 13 Law Journal.

In that detailed report, these additional statements and recommendations were made, the page references being to said 13 Law Journal:

The Exchange freely granted *full access* to every fact and document and to all information in its possession, and rendered *every assistance possible* in aid of the investigation in hand (541).

"It is practically *the only market in London* for the buying and selling of stock and shares" (542).

The right of entry is *strictly confined* to its members and their authorized clerks (541, 542).

"Out of the *millions* of contracts made on the Exchange, such a thing is *hardly known* as a *dispute* as to the existence of a contract or its terms" (552).

"The parties are enabled to count upon a *reasonable speed and certainty* in the transaction of business; and the vast amount of business done secures to those who deal there *as small a difference* between the buying and selling price as can be obtained in any other market" (553).

It is to the interest of the public that admission to

membership therein should be made *more difficult* and *fewer persons* accorded the privileges thereof. It is essential to the success of such an organization that it should be "*close*." By rendering admission too easy, there is danger of misleading the public into supposing that given persons are entitled to the *great credit* impliedly guaranteed by the action of the Exchange in electing them as members (607).

The rules of the Exchange have been framed with much care, and embody the result of long experience and vigilant attention on the part of persons best posted, and most deeply concerned in upholding the *good name of the market* and in protecting *all interests* (616).

Any attempt to overrule the conclusions thus codified "would be *detrimental to the honest and efficient conduct of business*" (616).

It is important to the public that all reputable non-member brokers should be brought under the control of the rules and committees of the Exchange (617).

"Such a body can hardly be interfered with by Parliament without destroying that *freedom of self-government* which *is the only life and soul of business*" (619), a paragraph quoted from a Parliamentary committee on Foreign Loans, 1875.

The Exchange was not formed as the result of *voluntary action*, but its organization was *forced* by circumstances of a mercantile nature over which the members had but little control, *i. e.*, such a body was *essentially necessary to that orderly conduct of trade by which alone it can flourish and be carried on* (619).

Similar considerations induced the judicial conclusions announced in a case decided as recently as October 22, 1897. Although decided at *nisi prius*, the large experience, especially in this class of litigation, and the great learning of Judge TULEY, entitle his rulings to the most respectful consideration. There, the same firm of Greer, Mills & Co., which figures so prominently in this record, appears to have been fined by the Chicago

Live Stock Exchange for disposing of *diseased cattle* contrary to the rules of that body. They applied for an injunction; and it appears from the certified record of that hearing that when it was offered to be shown that the volume of the sales made by Greer, Mills & Co. per annum, was from ten to twelve million dollars, and that if they were expelled for non-payment of the fine in question, they would sustain irreparable injury, because the rules of the Exchange *forbade its members to deal with non-members or with suspended or expelled members*, the learned judge, instead of promptly pronouncing such a rule to be criminal and void, said: "There is no order expelling them. * * They can pay the fine and not be expelled." He accordingly excluded the offer, and in upholding the further rule that a member should be responsible for the acts of his servants, and declaring that such member is alike amenable to discipline whether his action be intentional or spring from carelessness, Judge TULEY also said: "It may be absolutely necessary for the purpose of the organization to * * have *an iron rule* and hold its members *strictly to it*. * * That is *the only safe rule* for the Board to adopt. * * *The existence of the Exchange demands that kind of a rule*."

Greer, Mills & Co. v. Chicago Live Stock Exchange, Cook County, Ill., Cir. Ct., Oct. Term, 1897.

The force of what has been said of the London Stock Exchange has been sought to be escaped by the remark that the rules of that body do not prescribe a schedule of commissions. It is to be noted, however, that the attacks made upon Exchanges by the present suit are not limited to a denial of the right to agree upon such a schedule. Indeed, the circuit court deemed this phase of the case to be of so little importance, or to be possessed of such slight merit, that it was not included in the matters condemned in the opinion delivered, nor alluded to as a reason for the

conclusions announced (Record, 267–270). The lawfulness of these bodies is here questioned upon the additional grounds that they are "monopolies" whose existence is fraught with injury to the public, and that they constitute conspiracies to restrain trade, in that they refuse to grant access, or the other privileges of membership, to competing non-members who conduct their business in violation of the rules, and to suspended or expelled members, but, instead, inaugurate a "boycott" by refusing to have business intercourse with them. In these respects, the London Stock Exchange is quite as great and hardened an offender as are the other Exchanges of the world.

It is an entire error, however, to say that the absence, from the rules of that body, of a provision concerning commissions, is because of the existence of prohibitory legislation on the subject. And as "in most of the local Stock Exchanges (in that country) the amount of a broker's commission *is regulated by a fixed tariff*" (Melsheimer, Stock Exchange, 60), recoveries for which have been many times sustained (note 1, p. 61), the absence of such a schedule at London cannot be attributed, in the slightest degree, to any apprehension or doubt as to the *right to thus agree*.

The English statute referred to (10 Anne, c. 19, §12) was enacted in 1712—nearly *ninety years prior* to the organization of the London Stock Exchange—and is a part and parcel of the Parliamentary regulation of brokers which is found in the earlier English statutes.

The percentages there prescribed are *maximum rates*, and apply only to certain enumerated classes of securities dealt in on the floor of that body. The existence of such a statute may lend force to the suggestion that such rates can be *regulated* by legislation, (at least in England and in the absence of constitutional guaranties), but is wholly irrelevant to the question whether a schedule of *minimum* commissions fixed by an Exchange

evidences a combination in restraint of trade. And if there were any connection between that legislation and the methods of the members of the London Exchange, the statute referred to would prove, not that it was improper or unlawful *to agree on such a schedule*, and much less that such bodies should be shorn of one of their *most efficient functions to promote the good of trade*, but rather that full protection was secured against the possibility of extortion, or other injury to the public, by the enactment of a table of maximum charges.

The statute of Anne, and the other regulations on the subject of brokers generally, Parliamentary and municipal, (some of which are considered on pp. 101, 102, of the foregoing Brief), do, however, demonstrate that *before Exchanges were established and their powers fully recognized*, there was a constant and pressing occasion for *governmental regulation* in the premises, to the end that abuses might be prevented, fair dealing insured, reasonable rates prescribed, and the orderly conduct of the occupation provided for. The formulation and enforcement of rules to *precisely the same ends*, and for *identically the same reasons*, have been and are *the chief aims of Exchanges*. It has been many times judicially declared that these bodies, by means of their rules, committees, and machinery, are best fitted to discharge this delicate and complex task, and stand equipped with a disciplinary power to secure the commendable end in view which is far more effectual—and of correspondingly greater benefit to the public—than can be accomplished by the processes of the criminal courts (Brief, 100, 107).

Hence, it is of striking force that *since Exchanges have been organized* and have assumed the supervision of the item of broker's commissions, and provided regulations for the orderly conduct of the occupation, there has been *no further resort to such legislation* in any of the civilized countries of the world. And it is particularly notable,—in view of the marked disposition

on the part of American legislatures (especially during the past 30 years) to regulate rates and charges generally,—that no statute has been passed declaring rates of commission, or for storage, inspection, or otherwise, fixed by a typical commercial Exchange, to be unjust or unreasonable. This proves not only that Exchanges are exceptionally well-qualified to regulate the matter, but that they have shown an appreciation of the confidence reposed in them by fixing rates, and providing regulations in other respects, which are universally conceded to be fair to all concerned. Self-interest is doubtless also a factor in this result, especially in these days of ready and rapid communication and transportation, by means of which all parts of this country and of the commercial world are brought into convenient trade relations to each other (a result to which Exchanges have largely contributed, Dos Passos, Stock Exchanges, 10), and in times when the contest for commercial supremacy between different cities and nations is a marked feature of contemporary history.

An explanation of the silence of the rules of the London Stock Exchange on the subject of commissions readily occurs when it is remembered that the business done by its members is of the most cosmopolitan and varied character; and that a great majority of it is so classified that dealings therein are confined to respective circles of brokers and dealers. This has doubtless resulted from the fact that such dealings were thus carried on for centuries before that Exchange was formed. It is no easy task (perhaps, a most difficult one in that country, of all others) to eradicate or overturn a commercial custom so long established and so deeply rooted. As a consequence of this course of dealing, certain securities are handled only by a given coterie of brokers and bankers. For each of these sub-divisions, however, *usage* has fixed a rate of commission equally as well-known and quite as hon-

orably adhered to in practice by all *reputable* brokers, as if embodied in a formal rule (Melsheimer, Stock Exchange, 60). As the members of that body are required to be re-elected *annually*, the remedy for conduct deemed to be injurious to the organization is most potent and easy of application. A refusal to re-elect is the equivalent of a suspension or expulsion elsewhere. These conditions and customs do not exist in this country, where it is the universal opinion that trade is more benefited by providing such a schedule, and that Exchanges are better enabled to accomplish their useful purposes by making membership therein a privilege to continue so long as the conditions upon which the same is granted—compliance with the rules of the body—are observed by the holder.

The practical operation of the absence of such a schedule from the rules of the London body is graphically delineated in a review of that organization from the pen of Mr. Henry May in the Fortnightly Review for 1885. The general tone of his paper shows that author to be anything but a friendly critic. Indeed, the judicial conclusions upon the subject of time bargains and the like, noted in the principal Brief (pp. 105-112; 115; 268), demonstrate that some of his deductions are unjustifiably severe. Nevertheless, he was inexorably constrained, and frank enough, to concede that "the London Stock Exchange is *the natural outcome of public requirements*. As an organized machinery for dealing in securities it is *a public necessity*. * * Its ordinances and customs are *undoubtedly framed upon* the same *principles of honor, integrity, and fair dealing* which actuate every honest and straightforward man."

The result of a want of absolute uniformity in the matter of commissions is thus sketched:

"The business classification of the members is not very difficult:

1. "Among brokers there is the old-fashioned investment broker—a man who is regarded by his clients as the

very incarnation of trustworthiness, wisdom, and affectionate integrity, a man to whom his 'family connection' is as much a source of pride and profit as is that of the family doctor, lawyer or parson; a man *who invariably charges a full commission* and abhors speculation, and whose clients wait upon him at his office.

2. "Then there is the leading *peripatetic broker*, an active man of business capital and position, who is rarely to be found in his office, but who chiefly spends his time in running to and from the Stock Exchange, canvassing his clients—for the most part financiers, foreign bankers, and merchants—in the streets, courts, and alleys between St. Swithin's Lane and Bishopgate Street, where they do most abound. * *

3. "Next, there is the '*touting*' *broker*, who earns a somewhat precarious living by speculating and the 'tape,' who assiduously reports or telegraphs (*probably prepaid*) every 'sixteenth' change of price, keeps a small army of 'touts' (*quasi solicitors*) *on half commission* to scoop in speculative orders, and *who knows not the meaning of real investment.*

4. "Lastly, there is the *quack broker* who waxes fat *on purely nominal brokerages*, and keeps a 'legitimate' gambling saloon, as distinguished from a mere 'bucket shop', who piles up money *by* '*besting*' *his clients*, and who is prolific in 'tips' which somehow generally fail to 'come off.'

Other intermediate varieties of brokers will no doubt suggest themselves to the reader."

"The London Stock Exchange", 44 Fortnightly Review, 577, 578, 579, 580.

And so it will no doubt suggest itself to the judicial mind that the American system of permitting none but brokers belonging to Mr. May's class one—"the very incarnation of trustworthiness, wisdom, and affectionate integrity"—to become or remain members of reputable Exchanges is *far more beneficial to trade* and to the interests of the public, than to declare that the Act of

Congress intended that what is said under classes three and four, should thenceforth describe the typical American broker, in whole or in part.

It is as monstrous to say that trade will be promoted by *encouraging* "touting" or "quack" brokers and their methods, as it is to conclude that an organization designed to *discourage* their success and to *protect the public* from their practices, is a combination to *restrain* trade, or designed to *injure* the commercial interests of our land!

If, however, the Act of Congress should be construed to prohibit every contract concerning or affecting trade (be it ever so beneficial and free from any element of actual or injurious restraint), or to deny to persons engaged in a merely private occupation the right to agree at what rate of wages or rates of commission they are willing to serve those who may seek to employ them, or to determine whom they will refuse to serve and the reasons therefor, in either event, the Act will be made violative of the Fifth Amendment to the Federal Constitution, in that it will, *as thus construed*, operate to deprive the contracting parties of liberty and property without due process of law. "Every unnecessary restraint on the natural liberty of mankind (it has been well said) is a degree of *tyranny* which no wise legislature will inflict."

And, of course, the Act is to be construed, if possible, so as to avoid an infraction of the constitution, (Grenada County v. Brogden, 112 U. S., 261, 269), a rule of special force when the personal rights of an American citizen are involved.

Boyd v. United States, 116, U. S., 616, 635;
Monongahela Nav. Co. v. United States, 148 U. S., 312, 325;
Gulf etc. Ry. Co. v. Ellis, 165 U. S., 150, 159, 160.

In this connection, it is proper to consider, whether,

VIII.

If each and every Contract Concerning or Affecting Trade or the Manner of Conducting it, is Construed to be Ppohibited by the Act of Congress, can the Statute be Upheld in view of the Fifth Amendment to the Federal Constitution?

The Act of July 2, 1890, can only be sustained as

an exercise of the power conferred upon the Congress by section 8 of article I. of the Constitution "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

There is no grant to Congress of a *general police power* such as *inheres* in the Legislatures of the several States. Congressional jurisdiction in the premises can only be upheld as included in the power *to regulate commerce*. While this power is doubtless a broad one, yet it cannot be said to be absolute. In the exercise of it, Congress cannot infringe upon rights which other clauses of the Constitution declared to be inalienable and unassailable. Under guise of regulating commerce, Congress cannot pass an *ex post facto* law or a bill of attainder, nor condemn a man unheard, nor take private property for public use without compensation, nor deprive a person of life, liberty or property without due process of law.

The Fifth Amendment "is a series of negations and of denials of right or power to the government. (325). * * Like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by that instrument, and among them is that of the Fifth Amendment" (326).

Monongahela Nav. Co. v. United States, 148 U. S., 312.

"A mere act of Congress cannot amend the Constitution. * * Legislation cannot abridge a constitutional privilege."

Counselman v. Hitchcock, 142 U. S., 547, 565, 585.

Of course, it is not denied that Congress may constitutionally protect commerce from such interferences as are outlined in *Ex parte* Debs, 158 U. S., 564, nor that in regulating commerce Congress can forbid contracts which *actually* have an *injurious effect* thereon. Here, however, there is no violent interference

with transportation or any other branch of commerce. Neither the Exchange nor its constituent members are seeking to injure or impede commerce. On the contrary, their purpose is that commerce shall expand in volume and that the benefits thereof shall be made so plain and become so widely known that the purchase, sale and transportation of live-stock will constantly and continuously increase.

No one is sought to be "compelled" (in a legal sense) to employ a commission merchant. The sole scope of the rule on the subject of commissions (IX.) is, that, *if* any one should desire to employ a member, the latter's compensation is to be fixed in accordance with the usual and reasonable rates there scheduled. This does not restrain commerce, as such, nor does it "coerce" a principal into employing such member. It merely operates as an honorary agreement on the part of a member concerning his compensation. Undoubtedly, a member could, of his own motion, refuse to serve for less than the named commission. Equally clear would be the right of a partnership or of a corporation to decline to work for less because the constating articles or by-laws so provided. (Planters' Compress Co. v. Ireys, 16 South. Rep., 386). And upon the same principle, the usage may be embodied into a rule of an Exchange.

The non-trading rule (XVI.), in effect, confines the privileges of the Exchange to members in good standing, a provision which is not only reasonable but imperatively essential to the successful maintenance of the organization (McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 15 N. Y. Supp., 206). When the members of such a body operate in a closed room, as in case of a Stock or Grain Exchange, the same end is accomplished by prohibiting dealings elsewhere and by denying access to non-members.

Board of Trade v. French, 61 Ill. App., 349;

Speight v. Gaunt, 22 Ch. Div., 727, 742, 745, 754.

The occupation of the parties is essentially private. Individually or collectively, they have the right to serve whom they please or to refuse to serve at their own uncontrollable election. (Kirkman v. Shawcross, 6 T. R., 14).

The Definition of "Liberty."

The precise point is, whether they can constitutionally be denied the right to prescribe the wages for which they are willing to serve, by agreement among themselves, especially when those wages are the usual ones for such services, and, therefore, not unreasonable.

That the rights of the defendants to contract in this respect constitute a portion of the "liberty" which the Constitution protects is now established.

"The liberty mentioned in the Constitution means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all legal ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose *to enter into all contracts* which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Allgeyer v. Louisiana, 165 U. S., 578, 589;
Matter of Jacobs, 98 N. Y., 98;
People v. Gillson, 109 N. Y., 389;
State v. Goodwill, 33 W. Va., 179;
Comm. v. Perry, 155 Mass., 117;
Leep v. St. Louis etc. Ry. Co., 58 Ark., 407;
Low v. Rees Printing Co., 41 Neb., 127;
Ritchie v. People, 155 Ill., 98;
Palmer v. Tingle, 45 N. E. Rep., 313 (Ohio, 1896).

So, too, the business which the defendants have built up and the right to use their labor to advance their own condition in life, constitute "property" within the protection of the constitution.

Yick Wo v. Hopkins, 118 U. S., 356;
Kuhn v. Common Council, 70 Mich., 534, 537;
People v. Otis, 90 N. Y., 48, 52.

The inquiry is, therefore, narrowed to whether the Act of Congress of July 2, 1890, if construed to inhibit any and all agreements between persons, engaged in a merely private occupation, fixing the compensation for which alone they are willing to work, is violative of constitutional guaranties? Stated in another way, can Congress compel such persons to labor for an employer whose service they are unwilling to enter and at wages which are not satisfactory to them?

The two questions involve identically the same considerations.

Here, any one desiring to buy or sell live stock at the Kansas City Stock Yards, is free to act in his own behalf or to employ a commission merchant to act for him. Clearly, Congress could not compel the owner of live stock or an intending purchaser to deal only at such Stock Yards, nor prohibit him from employing a broker if he so desired, nor, on the other hand, declare it an offense for him to buy or sell without first making such employment. Nor can it enact that such a broker, at least so long as his occupation is merely private, must serve all who come and at prices he is not willing to accept, even though the prices he asks stand fixed by partnership articles or corporate by-laws. In the forceful language of Mr. Justice HARLAN such a statute "would be an invasion of one's *natural liberty* by compelling him to work for or to remain in the personal service of another." (Arthur v. Oakes, 63 Fed. Rep., 310, 317, 318). And, most certainly, a court cannot adjudge such a duty in the absence of a valid statute.

Does a different rule obtain because the

parties have chosen to exercise the very same "natural liberty" by forming an Exchange, Trades Union, or the like? It is to be at all times remembered that the defendants are not engaged in selling or fixing the price of a commodity or article of prime necessity, within the meaning of the cases on the subject. It so happens that their services consist, in part, *in negotiating a sale*, but this is only in the *exercise of their occupation*, and not as owners or purchasers. (Union Stock Yards Bank v. Gillespie, 137 U. S., 411, 415). When all has been said, they are exercising an occupation, performing labor, for a commission, namely, wages. "The rules of the Exchange are merely machinery for bringing the two parties (principals) together." (Bowring v. Shepherd, L. R., 6 Q. B., at 327).

Nor does the inquiry under consideration involve a matter of resorting to *unlawful means*. The precise point is, whether persons engaged in a given private occupation can agree upon a schedule of wages, conceded to be the usual ones prevailing throughout the United States, and to be no more than a fair compensation, without any purpose to resort to any means to exact payment of the wages so fixed, except only to refuse to serve principals who are unwilling to pay them.

It will not do to say that the skill of the defendants is so great that all are anxious to avail themselves of it, or that the rules of their Exchange afford facilities so perfect, and so great a protection against injury, that buyers and sellers of live stock concur in desiring to reap the benefits of a transaction thereunder. It cannot be made a crime to possess or develop such a degree of skill or to provide facilities or guaranties of the character indicated. On the contrary, as "it is the policy of the law, for the advantage of the public, *to encourage and protect commercial enterprise*," it is a necessary corollary that "if a man establishes a business and makes it valuable, by his skill and attention, the good-

will of that business is recognized *by the law as property*," and that a contract to preserve or further that good-will cannot be said to restrain trade or to be injurious to the public.

Peabody v. Norfolk, 98 Mass., 452, 457;
Salomon v. Hertz, 40 N. J. Eq., 400, 402;
Thum v. Tloczynski, 72 N. W. Rep., 140, 144, (Mich., 1897);
Washburn v. National Wall-Paper Co., 81 Fed. Rep., 17, (C. C. A.).

The question, therefore, recurs whether a mere agreement as to a schedule of commissions, voluntarily made and adhered to, by persons engaged in a private occupation, can be constitutionally annulled.

Act of Congress Authorizing Trades Unions to be Incorporated.

As to Trades Unions, Congress has expressly authorized their incorporation "for the purpose of the regulation of their *wages and their hours and conditions of labor*, and the protection of their *individual* rights in the prosecution of their trade or trades," with power "to make and establish such constitution, rules and by-laws as it may deem proper, etc." (Act July 29, 1886, 24 Stat. L., 86). Of this statute, Mr. Justice Harlan said that its "objects are *most praiseworthy* and should be sustained by the courts whenever their power to that end is properly invoked." (Arthur v. Oakes, 63 Fed. Rep., 310, 324, 325).

The contention of the complainants will not only work a repeal of the Act of 1886 by force of the Act of 1890, but also transform the corporations organized under the former into criminal conspiracies!

"Due Process of Law."

The power to thus abridge the liberty and property of the citizen does not exist unless it is accomplished by

"due process of law." It is fully recognized that this phrase is not susceptible of a definition so comprehensive as to cover every conceivable case. But the authorities clearly disclose the fundamental tests to be applied in determining the present instance.

Primarily, it is established, and it is a self-evident proposition, that a mere legislative declaration is not, *per se*, due process of law; otherwise, the constitutional guaranty would be a mere form. The provision is intended to limit legislative power as well as that of other governmental departments.

Murray's Lessee v. Hoboken Land Co., 18 How., 272, 276, 277.

"Can Congress make anything due process of law, which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition is of no avail, or has no application, where the invasion of private rights is effected under the form of legislation."

Davidson v. New Orleans, 96 U. S., 97, 102, 107.

At a comparatively early day it was said to be the accepted and settled meaning of the provisions in question "that they were intended to secure the individual from the *arbitrary exercise* of the powers of government, unrestrained by the established principles of private right and distributive justice."

Bank of Columbia v. Okey, 4 Wheat., 235, 244.

This has been enforced by a series of well-considered cases:

Hurtado v. California, 110 U. S., 516, 532, 535, 536;

Hagar v. Reclamation District, 111 U. S., 701, 708;

Yick Wo. v. Hopkins, 118 U. S., 356, 370.

In the most recent discussion of the subject it was ruled that "due process of law in the Fifth Amendment refers to that law of the land which derives its authority from the legislative powers conferred on Congress by

the Constitution of the United States, *exercised within the limits therein prescribed and interpreted according to the principles of the common law.* Undoubtedly, the amendment forbids any *arbitrary* deprivation of life, liberty or property."

In re Kemmler, 136 U. S., 436, 488.

Among the rights secured by these rules is that of following a lawful calling, subject, of course, to proper local police regulations, but not subject to be arbitrarily and wholly denied.

Dent v. West Virginia, 129 U. S., 114, 121, 122, 124;

People v. Gillson, 109 N. Y., 389;

Munhall v. Pennsylvania R. Co., 92 Pa. St., 150, 156.

These propositions are not shorn of efficacy because the attempt to abridge the rights of a citizen is undertaken to be made under a so-called Anti-Trust statute.

In re Grice, 79 Fed. Rep., 627, 639-645.

Consequently, an attempted interference with the rights of citizens,—with their freedom to contract and to conduct their lawful business as merchants have done for centuries,—must rest upon a basis of some substantial or justifiable reason. To say that at the mere whim of Congress they must surrender their rights in that behalf is to call a halt in the "victorious progress of the race" and to degrade American freemen to the position of English laborers in the days of Edward III., which a thoughtful writer has declared to have been the essence of *serfdom!* Of the legislation which proceeded upon this basis, the same authority said: "I should not myself describe it as a system specially adapted and designed *to protect freedom of trade.*"

3 Steph. Hist. Crim. Law, p. 209.

It is to be recalled that the Act, construed as outlined, does not merely operate to *regulate* the occupation of commission merchants or to laborers generally, but, leaving it to occupy its status as a merely private occu-

pation, it denies the right to carry it on, under the rules of an Exchange or other association—constituting a voluntary agreement on the part of its members, even though those rules be fair in form, and involve no injury to the public, and even though the wages at which services are offered to the public for their acceptance or rejection, are not challenged as unjust or oppressive. In the American courts, at least, it has been established by the great weight of authority that the right to thus agree is a fundamental and inalienable one, as more fully shown by the cases upon the subject noticed at a subsequent page. Some of them are:

Freeman's Note, 28 Am. Dec., 508;
Master Stevedores Asso. v. Walsh, 2 Daly, 1, 5, 7–12;
Ladd v. Southern Cotton Press Co., 53 Tex., 172, 188, 193;
Carew v. Rutherford, 106 Mass., 1, 14;
Queen Ins. Co. v. State, 86 Tex., 250, 265, 269–275;
Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St., 173, 188.

"There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than *the sacred right of labor*."

Live Stock Assn. v. Crescent City Co., 1 Abb. U. S., 388, 398.

It is to be remembered, too, that the two matters of *uniformity—one weight* and *one measure* throughout the realm—and *the freedom of merchants* from unreasonable tolls or impositions, were expressly embodied in MAGNA CHARTA.

"LEGISLATIVE JUDGMENT."

Again, if the Act of Congress is to be construed that, independently of all considerations of actual public

injury, the mere fact that such a contract has been made is conclusive proof of guilt, the statute becomes open to the objection that it is a "legislative judgment:" it condemns without a hearing; it adjudges guilt because of an arrangement in no wise causing injury to the public, (for to accept the fiat of the legislature that a given contract is thus fraught, fritters away the constitutional guaranty and leaves the legislative action impregnable to constitutional objection); and makes that conclusively guilty which in our land has ever been regarded as an exercise of the inherent rights of a freeman.

Stuart v. Palmer, 74 N. Y., 183, 190, 191;
State v. Julow, 129 Mo., 163;
Cooley Const. Lim., 6th ed., pp. 47, 49, 311, 429–438.

"A statute which undertakes to make an act, otherwise innocent and lawful, a criminal offence, constitutes 'legislative judgment,' without trial or sentence."

Shaver v. Pennsylvania Co., 71 Fed. Rep., 931, 938, 939.

In Lord George Gordon's case, Mr. Erskine phrased this rule in felicitous words: "There is little difference whether a man dies by the stroke of a sabre, without the forms of a trial, or by *the most pompous ceremonies of justice*, if the crime could be made at pleasure by the State *to fit the fact that was to be tried*" (1 Erskine's Speeches, by High, p. 89).

A very learned member of the bar, proceeding upon a construction of the Trans-Missouri opinion which is believed to be far beyond what this Court intended to decide, has, in an exceedingly able manner, shown that, if interpreted as assumed by him, the Trust Act is in palpable violation of the Constitution. We bespeak for that presentation the careful perusal it so richly merits.

W. D. Guthrie, Esq., in 11 Harvard Law Review, (June, 1897), p. 80.

The strongest argument in support of Mr. Guthrie's position is the order of injunction in the present case; for if Congress has power to make mere refusals to deal or to serve on the part of persons exercising a mere private occupation, criminal offences, then surely boasted American citizenship has sunk to the level of *serfdom in the feudal days!* (Yick Wo v. Hopkins, 118 U. S., 356, 370.

IX.

The Validity, Generally, of Associations Formed by Persons Engaged in a Private Business or Occupation, and of Labor Unions.

The review which has been had of the Trans-Missouri case makes it proper to consider, briefly, whether associations between persons engaged in a private business, in the form of labor unions, and other similar organizations, are indiscriminately to be condemned; and especially whether agreements between a number of such individuals not to deal with or work for others, or fixing a schedule of wages or fees for their services to be paid by those who desire to employ one of the associates, constitute *per se* and conclusively a criminal combination.

"The law by no means intends to exclude society from the benefits of united effort for legitimate purposes, and such as promote the well-being of individuals or of the public. It uses the word conspiracy in its *bad* sense."

State v. Burnham, 15 N. A., 396, 401, 402.

The Trans-Missouri case clearly recognizes (166 U. S., at 323), that although "a great and extended change in the manner or method of doing business" may produce loss or distress to those who do not or cannot conform thereto, this fact does not stamp those who provide

the improved or extended facilities as conspiring to restrain trade.

The end of promoting individual commercial success may lawfully be reached by an association for that purpose, "although its effect may have been to take business from others. * * To deny this right would be *an unwarranted interference with the management of a person's own business.*" Such an arrangement does not restrain trade. Damages resulting to competitors are mere incidents or consequences of the exercise of a lawful right, though the declared purpose of the associates may be to drive others out of the trade. "The fact that the defendant foresaw the result of his efforts, and also declared it, matters not."

Munhall v. Pennsylvania R. Co., 92 Pa. St., 150, 156, 157.

AGREEMENTS NOT TO DEAL WITH OTHERS.

The underlying principle that a party may bind himself to work for or patronize a certain other person *exclusively*, is axiomatic in every jurisprudence which recognizes the right of contract.

Greenwood, Public Policy, pp. 658, 666, 667, 676–683.

When a by-law of the Associated Press to the effect that "no member shall receive reports from a competing organization," was attacked, it was answered that the very fact that thereby the association *was made stronger and better enabled to carry on its business* was, of itself, a sufficient justification for the provision.

Matthews v. Associated Press, 136 N. Y., 333, 341.

In the leading American case on the subject, Mr. Chief Justice SHAW laid down these propositions:

"The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. *Such a purpose is not unlawful* (129).

* * The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work if they so prefer. In this state of things, we cannot perceive that it is criminal *for men to agree together to exercise their own acknowledged rights, in such a manner as best to subserve their own interests*" (130). Parties not bound by contract may lawfully agree not to work for or deal with any person not belonging to the same association or who employs or deals with a non-member thereof. "It is simply an agreement amongst themselves *not to work for a person who should employ any person not a member of a certain association.*" Even though others are damaged or impoverished thereby, no legal wrong is done, so long as no fraud or force is used (131).

Comm. v. Hunt, 4 Met., 111.

Such is also the established rule in England.

Collins v. Locke, L. R., 4 App. Cas., 674, 685, 687.

"Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. * * *He may refuse to deal with any man or set of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions.*"

Carew v. Rutherford, 106 Mass., 1, 14;
Bohn Mfg. Co. v. Hollis, 54 Minn., 223;
Brewster v. Miller, 41 S. W. Rep., 301, (Ky., 1897).

So it was ruled of a refusal of a stock yards company to permit a railroad company to deliver live-stock at its yards because the latter *refused to agree to deliver all live-stock* consigned over its lines *exclusively* at the yards of the former.

Delaware etc. R. Co. v. Central Stock Yards Co., 45 N. J. Eq., 50, 59–62; affirmed, 46 N. J. Eq., 280.

In a case involving the validity of a rule which prohibited members of a Musical Union from performing in connection with non-members of the same body, it was said:

"Embarrassments in business which arise from the action of those engaged in or connected with a similar business, although influenced by obligations by them voluntarily assumed in becoming members of societies, or by representations made to them by individual members of such organizations, generally give no right of action to persons so embarrassed, either against the socities or the individuals so influenced (52, 53). * * *It affords him no legal ground of complaint that others are members and voluntarily obey its rules and regulations*, although such action requires them to refuse, under certain conditions, to transact business with the plaintiff." (56.)

Thomas v. Musical Union, 121 N. Y., 45.

Speaking directly of the very rules here in question, it was laid down by a court, whose views on the general subject are of the extremest character, (Craft v. McConoughy, 79 Ill., 346; New York etc. Grain Co. v. Board of Trade, 127 Ill., 153; and Moore v. Bennett, 140 Ill., 69), that "admitting the right of the complainant to embark in and prosecute the business for which it was organized freely and without improper obstruction, it does not follow that it has a right *to deal with parties who are unwilling to so deal, or to compel those who do not choose to do so to purchase its property*. Absolute freedom of commercial intercourse to which a party may be entitled *is not interfered with by the refusal of another to deal with such party on any terms*. The refusal of any or all of the members of the Exchange to purchase live-stock of the complainant is merely *an exercise of their clear legal prerogative*, and, if they have

a right to so refuse, it is difficult to see how an agreement, as between themselves, to abstain from dealing with the complainant, is a matter in respect to which the complainant is entitled to any species of equitable relief."

American Commission Co. v. Chicago Live Stock Exchange, 143 Ill., 210, 234;
Ladd v. Southern Cotton Press Co., 53 Tex., 172, 188–192;
Seeligson v. Taylor Compressing Co., 56 Tex., 219, 227;
Board of Trade v. French, 61 Ill. App., 349.

In conformity to this unbroken line of authority, a learned court has ruled that persons engaged in the occupation of master plumbers might lawfully form a national association, with local branches in nearly all important cities, and agree *not to deal* with any manufacturer or wholesale merchant selling to a non-member; that a non-member injured as a result had no cause of action; and that a notice of withdrawal of patronage is not a "threat" within the rule applicable to cases of conspiracy: "It was perfectly competent for the members of the association, in the legitimate exercise of their own business, to bestow their patronage *on whomsoever they chose, and to annex any conditions which they saw fit.* The wholesale dealers were free to comply with the condition or not, as they saw fit. If they valued the patronage of the members more than that of the non-members, they would doubtless comply; otherwise not."

Macauley v. Tierney, 33 Atl. Rep., 1-4, (R. I., 1895), 19 R. I. —— *

On motion for rehearing, the question received long and thorough consideration, and the conclusions above announced were adhered to.

10 Harvard Law Review, p. 447, (March, 1897).

The same view has been taken by the courts in construing the Act of Congress under consideration:

"It is manifest that if the agreement were lawful, it could not be unlawful to notify the world of its existence. (853.) * * *Nor is it unlawful to agree not to deal with any trader who purchases from a competitor.* Many perfectly legitimate reasons might be suggested for such an agreement (854). * * The construction contended for * * would extend to every agreement whereby A and B agree that they will not sell goods to those who buy of C" (854).

Dueber Watch Co. v. Howard Watch Co., 55 Fed. Rep., 851.

The Law of Boycotts.

It is an entire error to suppose that the recent cases, of which Toledo etc. R'y. Co. v. Pennsylvania Co., 54 Fed. Rep., 730, is a type, lay down any different rule on the subject. In those cases the elements of force, violence, and other unlawful means intervened. Judge Taft not only distinctly ruled, in that case (at p. 738) that "*it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person and to announce their intention of doing so*," and that liability only attaches when the act is done *with malice i. e.*, with the intention to injure another without lawful excuse, but in delivering the annual address to the American Bar Association, 1895, took particular pains to say, with reference to the case in question:

"As a matter of fact there is nothing in any Federal decision, directed against the organization of labor to *maintain wages* and to secure terms of employment otherwise favorable. The courts, so far as they have expressed themselves on the subject, recognize *the right of men for a lawful purpose to combine to leave their employment at the same time*, and to use the inconvenience this may cause to their employer as a legitimate weapon in the frequently recurring controversy as to the amount of wages. *It is only when the combination is for an un-*

lawful purpose and an unlawful injury is thereby sought to be inflicted, that the combination has received the condemnation of the Federal as well as of the State courts."

Proceedings Am. Bar Assn., 1895, pp. 268, 269.

Such agreements are in nowise within the reason or the letter of the rules laid down in the modern conspiracy or "boycott" cases. These proceed distinctly upon at least two fundamental conditions, both of which are absent from this case:

a. That the defendants *intended maliciously to injure another.* This is not even charged in the bill, and as wrong is not to be presumed, the case must be treated as involving no such element.

b. That the defendants were likewise acting without *just excuse, i. e.*, a purpose to serve some lawful interest of their own.

Judge TAFT made these points very plain in the elaborately considered case of Toledo etc. Ry. Co. v. Pennsylvania Co., 54 Fed. 730, and his views were reinforced by Mr. Justice HARLAN in Arthur v. Oakes, 63 Fed. Rep., 310. In the latter case, it was directly said that no American citizen can be forced *to deal with another against his will* and that an agreement by a number, however large, not to thus deal, was the exercise of an undoubted right, *guaranteed by the constitutional provisions.* (317, 320). Wrong intervenes when the association is formed for the *sole or leading* purpose of "maliciously injuring another, without just cause or excuse." (320, 351.)

It was conceded, even in the extreme case of Comm. v. Carlisle, Brightly N. P., 36, that *combination alone cannot be declared to be illegal* without necessarily imparting "criminality to the most laudable associations," (39), and laid down that "where the act be done and the means of accomplishing it are lawful, and the object to be attained is meritorious, combination is not conspiracy." (42).

"If that which has been done or is anticipated is

not wrongful, the fact that the defendants may have combined to do it, would not make it so."

Lewin v. Welsbach Light Co., 81 Fed. Rep., 904, 906;

Root v. Rose, 72 N. W. Rep., 1022, 1023 (N. D., 1897).

In the present state of the authorities, it is no longer open to question that parties may associate in order to thereby benefit themselves and may make it to the interest of other persons, or may persuade them, to join their association. The ony limitation upon this right which can be justly asserted is that a resort shall not be had to *unlawful means.*

Arthur v. Oakes, 63 Fed. Rep., 310;

Consolidated Wire Co., v. Murray, 80 Fed. Rep., 811, 828;

Mackall v. Ratchford, 82 Fed. Rep., 41, 42;

2 Whart. Crim. Law, 9 ed., Sec. 1338;

"Illegal Trade Rivalry," 45 Cent. Law Journal, 257. (Sept. 24, 1897.)

And all the cases recognize that such "just cause or excuse" exists in cases of organizations of persons engaged in business or labor for the purpose of promoting or bettering their condition.

Continental Ins. Co. v. Board of Underwriters, 67 Fed. Rep., 310;

Master Stevedores Assn. v. Walsh, 2 Daly, 1;

Bowen v. Matheson, 14 Allen, 499, 503;

Sharp v. Whiteside, 19 Fed. Rep., 156, with note by Dr. WHARTON, 164.

And in two recent cases decided by State courts holding extreme views on this subject, it was distinctly ruled that "it is not a *a mere passive, let-alone policy, a withdrawal of all business relations, intercourse, and fellowship, that creates the liability, but the threats and intimidation shown in the complaint.*"

Jackson v. Stanfield, 137 Ind., 592, 613;

Cote v. Murphy, 159 Pa. St., 420, 431;

Such is the unbroken line of authority:

Hunt v. Simonds, 19 Mo., 583;
Walker v. Cronin, 107 Mass., 555;
Queen Ins. Co. v. State, 86 Tex., 250;
Delz v. Winfree, 6 Tex. Civ. App., 11;
Longshore Printing Co. v. Howell, 26 Ore, 527;
Thomas v. Cincinnati etc. Ry. Co., 62 Fed Rep., 803, 820;
U. S. v. Cassidy, 67 Fed. Rep., 698, 711;
Gibson v. Lawson and Curran v. Treleavan, 1891, 2 Q. B., 545, 559, 561, 562;
Carson's Wright Crim. Conspiracies, pp. 154, 155, 174.

The unsettled condition of the English law on this general subject induced Mr. Wright's treatise on "The Law of Criminal Conspiracies and Agreements." The author is now one of the justices of the Queen's Bench Division, and his treatise has been characterized as "a work of remarkable ability," (3 Steph. Hist. Crim. Law, 209; Lord COLERIDGE, in Gibson v. Lawson, 1891, 2 Q.B., at 560); and as a "subtle and expansive treatise (which) cannot fail to be the despair of future writers on the same subject." (Neville, Strikes, Preface, IV.). So far as lies within the power of human ability, the true rule on the subject has there been extracted from multitude of apparently irreconcilable cases to be found in the English reports.

It has recently been pointed out that even under the most extreme view of the law of conspiracy ever announced from a bench, unless it be the overruled opinion of Judge JENKINS, a combination to resist *an attack upon the lawful rights* of an association falls within the qualification above indicated and has the justification of the service of an *interest* or of a *lawful purpose*. Here, certain parties have announced a purpose to wage war on the Exchange and, if possible, to destroy its existence. The members of that organization, knowing that its continuance is not only absolutely essential to

the maintenance of the high standing of an important trading point, but also to further their own lawful interests, naturally and justifiably *decline to permit the attack to succeed.* They have, indeed, the right to wage the same war and to adopt the same measures invoked by their assailants and to combine for that purpose. Their action in doing so is not a conspiracy, nor can it be said that their "*real object*" is to maliciously injure the party who invites a controversy. The purpose of protecting the Exchange is a lawful one, and negatives any malice, in a legal sense, and "this is the *essential element* on which are founded *all the decisions* as to common-law conspiracy in this class of cases."

Cote v. Murphy, 159 Pa. St., 420.

In all these cases, it is to be remembered that "whatever, or however numerous or formidable may be the allegations of conspiracy, of malice, or oppression, of vindictive purpose, they are of no avail; they merely heap up epithets, unless the purpose intended, or the means by which it was to be accomplished, are shown to be unlawful."

Rich v. New York etc. R. Co., 87 N. Y., 382, 394;

O'Callaghan v. Cronan, 121 Mass., 114, 115, (GRAY, C. J.);

Bohn Mfg. Co. v. Hollis, 54 Minn., 223, 231, 232;

Day v. Brownrigg, 10 Ch. Div., 294, 302;

Payne v. Chandler, 134 N. Y., 385.

In the very recent case of Temperton v. Russell, 1893, 1 Q. B., 715; 4 Reports, 376,—which has been much criticised and must be conceded to be most extreme,—Lord ESHER distinctly ruled that the associates "had a *perfect right* to adopt their rules so as to bind *their own members* and they had a right to *insist on obedience* from such members." (4 Reports, at 380.)

In the most recent English case on the subject,

Lord Justice LINDLEY strongly emphasized these views.

Lyons v. Wilkins, 1896, 1 Ch., 811, 822.

The point that the coercive power (as distinguished from argument, persuasion or moral influence) of the associates is brought to bear upon *third persons* is declared to be the distinguishing feature upon which rest such cases as Comm. v. Carlisle and People v. Fisher, (the latter which "goes too far and cannot now be sustained," 2 Whart. Crim. Law, 9 ed., Sec. 1366, p. 215, note). Where the rules are sought to be enforced *solely against members* of the association, Comm. v. Hunt and kindred cases are indisputably correct.

Carson's Wright Crim. Consp., pp. 156, 157.

The power to make rules necessarily implies the right and power to enforce them (Dos Passos, 40), and the apprehension of a member that by violating a rule he wili endanger or lose his membership involves no element of duress, a threat, or unlawful means.

Quincey v. White, 63 N. Y., 370, 376.

The authorities on the subject are most exhaustively reviewed by Judge MCKENNA in Continental Insurance Co. v. Board of Underwriters, 67 Fed. Rep., 310.

In that case (at 322), and in Thomas v. Cincinnati etc. Ry. Co., 62 Fed. Rep., at 820, it is shown that in such a case as this the circumstances conclusively negative any suggestion of *personal malice.*

"To say that *if they continued to sell to plaintiff the members of the association would not buy from them is not a threat.* It does not interefere with the dealer's free choice. It may have prompted him to a somewhat sordid calculation. *It may have considered which custom was the most profitable, and have acted accordingly. But this was not such coercion and threats as constituted the actions of the combination unlawful.*"

Cote v. Murphy, 159 Pa. St., 420, 431;

Macauley v. Tierney, 33 Atl. Rep., 1; 19 R. I.,

——.*

"Cases where men voluntarily agree to observe rules

adopted by themselves" involve no element of boycott, conspiracy, or the like, (Jackson v. Stanfield, 139 Ind., 592). It is only when the associates undertake, "*by unlawful means, to overawe others*," *i. e.*, persons free to act and who have not agreed to abide by certain rules or a given contract, that a wrong is done, as in U. S. v. Workingmen's Council, 55 Fed. Rep., 994, 1000, and kindred cases.

Rogers v. Evarts, 17 N. Y. Supp., 264, 267, 269;
Affirmed, *sub nom.*, Reynolds v. Everett, 144 N. Y., 189.

Nor can it be said that it is illegal for the members to desire that all persons in the same business shall join the organization.

Comm. v. Hunt, 4 Metc., 111, 129.

Much less that although strong efforts are constantly being made *to force the privileges of membership on others*, nevertheless, the body aspires to be a *monopoly*.

Such a suggestion is conclusively answered by remembering that the Exchange *is not engaged in business at all* and, therefore, cannot be or become a monopoly.

Dos Passos, Stock Exchanges, pp. 13–15.

It has been repeatedly said that rules limiting the privileges to members in good standing were free from any taint of conflict with public policy. This was true even where membership was limited to *a few* and *denied to many anxious aspirants*.

Belton v. Hatch, 109 N. Y., 593, 599;
Goddard v. Merchants' Exchange, 9 Mo. App., 290, 295, 297;
Albers v. Merchants' Exchange, 39 Mo. App., 583;
People v. Produce Exchange, 149 N. Y., 401;
Ex parte Haebler, 149 N. Y., 414, 425.

Indeed, without such a rule an Exchange could not be maintained at all.

McQuillen v. Real Estate Exchange, 39 N. Y. St. Rep., 426; 15 N. Y. Supp., 206.

It is essential to the successful operation of such a body and to the diffusion of its beneficial effects that harmony shall characterize the relations of its members, and that care must be taken not to overload the market thereby established.

Hitch v. Hawley, 132 N. Y., 212.

In this instance, strangely enough, it is bitterly complained that there *is no such limit*, but that, on the contrary, the body is offering its privileges, and even *urging* them, *on all reputable persons alike*. Truly a most extraordinary monopoly!

ILLUSTRATIVE CASES.

Similar rulings have been made concerning

a. Clearing houses:

O'Brien v. Grant, 146 N. Y., 163, 173.

b. Agreements to deal exclusively at given stock yards:

Ellerman v. Chicago Junction Ry. Co., 49 N. J., Eq., 217, 252–258;

Fuller v. Hope, 163 Pa. St., 62.

c. To control the supplying of sailors at the city of Boston:

Bowen v. Matheson, 14 Allen, 499, 502.

d. An arrangement by which one elevator was to store and handle all grain coming over a given railroad:

Richmond v. Dubuque etc. Ry. Co., 26 Ia., 191, 201, 202;

S. C., 33 Ia., 422, 498;

S. C., 19 Wall, 584, 590.

e. An agreement by a railroad company to deliver all live stock at a named stock yards:

Covington Stock Yards v. Keith, 139 U. S., 128, 132, 133, 136.

f. A contract by a railroad company giving to one sleeping car company the exclusive right to operate such cars for a long period:

Chicago etc. R. Co. v. Pullman Co., 139 U. S., 79, 83, 90, 91.

g. An agreement to permanently give a ferry company the exclusive right to transport freight across the Mississippi river at St. Louis:

Wiggins Ferry Co. v. Chicago etc. Ry. Co., 73 Mo., 389, 409, 410; S. C., 119 U. S., 615.

h. An association among the cotton compressing companies of Galveston to compel all persons coming to said market to store their cotton with them and to pay certain arbitrary charges:

Ladd v. Southern etc. Co., 53 Tex., 172, 188, 192;

Seeligson v. Taylor etc. Co., 56 Tex., 219, 227;

Greenhood, Public Policy, p. 658.

i. An agreement among the base ball clubs of the United States,—declared to be engaged in an important business in which much capital stood invested, (for an illustration, see Philadelphia Ball Club v. City of Philadelphia, 38 Alt. Rep., 356),—that each club should have an exclusive option upon the services of all players under contract to it, for the ensuing season:

Metropolitan Exhibition Company v. Ewing, 42 Fed. Rep., 198, 203;

Metropolitan Exhibition Co. v. Ward, 24 Abb. N. C., 393, 419, note;

American Base Ball Club v. Pickett, 8 Penn. Co. Ct., 232;

1 Beach, Injunctions, §453.

Agreements Fixing Wages, Commissions, and Fees of Persons Engaged in a Private Occupation.

Agreements among persons engaged in a mere pri-

vate occupation fixing the wages or commissions at which they are willing to serve have been sustained in a multitude of cases.

Ladd v. Southern Cotton Co., 53 Tex., 172, 188, 193, (approved, 143 Ill., at 238);

Reg. v. Rowlands, 5 Cox C. C., 436, 460, (79 Eng. Com. Law Rep., 685, note *a*);

Collins v. Locke, L. R., 4 App. Cas., 674, 685;

Sayre v. Louisville Benev. Assn., 1 Duval, 143, 145, 146;

Carew v. Rutherford, 106 Mass., 1, 14;

Snow v. Wheeler, 113 Mass., 179, 185, 186;

Master Stevedores Assn. v. Walsh, 2 Daly, 1, 5, 7–12;

People v. Barondess, 61 Hun, 571, 588, (views of DANIELS, J., approved by Court of Appeals, 133 N. Y., 640);

Queen Ins. Co. v. State, 86 Tex., 250, 265–268, 269–275, (exhaustive review);

Longshore Printing Co. v. Howell, 26 Ore., 527, 539–543, (full discussion).

The cases on the subject are elaborately annotated by A. C. Freeman, Esq., in a note to People v. Fisher, 28 Am. Dec., 507, in which the conclusion is reached that "*this is a plain right upon which no doubt ought ever to have existed.*" (508).

See, also,

U. S. Chemical Co. v. Provident Chemical Co., 64 Fed. Rep., 946, 950;

Bonsack Machine Co. v. Smith, 70 Fed. Rep., 383, 388;

Am. Live Stock Com. Co. v. Chicago Live Stock Exchange, 41 Ill. App., 149, 152;

Olmstead v. Distilling & Cattle Feeding Co., 77 Fed. Rep., 265, 269, 270.

It deserves to be noticed, in passing, that none of the many agreements noted in the books by which one person has bound himself to render services exclusively

to another, have been annulled as in restraint of trade and that the law has settled to an acceptance of the views expressed and distinctions drawn by Lord ELDON in Morris v. Colman, 18 Ves., 437.

Lumley v. Wagner, 5 De G. & S., 485, 513; on appeal, 1 De G., M. & G., 604, 620, 621;

Whitwood Chemical Co. v. Hardman, 1891, 2 Ch., 416;

Daly v. Smith, 38 N. Y. Super., 158; 49 How. Pr., 150.

Learned annotators and the text-books concur in saying that there is no good reason for denying the validity of contracts of this nature.

Benjamin Vaughn Abbott, Note to McCaull v. Braham, 16 Fed. Rep., at 48;

1 Beach, Injunctions, pp. 452–459.

In one of the cases universally cited in connection with the law concerning unlawful trade combinations and monopolies, a learned American judge distinctly said: "*To fix a standard of prices among men in the same employment, as a fee bill* (here a schedule of commissions), *is not in itself criminal*, but may become so when the parties resort to coercive restraints or penalties upon the employee or employer, or, what is worse, to force of arms."

Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St., 173, 188.

It is sometimes urged that some of the older English cases deny the right of to thus agree. While it is doubtless true that the cases in the courts of England have been so largely based on statutes and controlled by policies which have not been adopted in this country, and are, therefore, of slight weight with us, (Carson's Wright Crim. Consp., p. 152; SHAW, C. J., in Comm. v. Hunt, 4 Met., 110), yet as the statutes and policy referred to were strongly *against the laborer*, (3 Steph. Hist. Crim. Law, p. 209), judicial recognition of the right to agree upon a schedule of wages is strong

evidence that, ordinarily, such an agreement is not illegal.

Thus, in Rex v. Ball, 6 C & P., 563, 570, WILLIAMS, J., in view of what has "been ignorantly supposed or represented," was particular to say that a mere agreement to maintain *an agreed table of wages* was not unlawful combination.

In Reg. v. Rowlands, 5 Cox C. C., at 460, also 17 Q. B., 686, *n*, Mr. Justice ERLE, a very great authority on this branch of the law, charged the jury that, "the law is *clear* that workmen *have a right to combine* for their own protection and *to obtain such wages as they choose to agree to demand.* * * A combination for the purpose of injuring another is at once a combination of an entirely different nature." On appeal, Lord Chief Justice CAMPBELL approved this charge, saying that "it was the right of the defendants, as English workmen to make the best of their labour, and to refuse to work unless *the terms upon which they were invited to work* were satisfactory," (17 Q. B., 671; also 6 Den., (Brit. Crown Cas.), at 388), to which he added, as reported in 5 Cox C. C., at 489, "That each might do that and the whole might do it." In passing sentence PATTESON, J., said that "the masters were at liberty to give what rate of wages they liked and to agree among themselves what wages they would pay. In like manner *the workmen were at liberty to agree among themselves at what wages they would work*" (389).

Regina v. Rowlands, 6 Den., (Brit. Crown Cas.), 364.

In a charge set out in a note to this case, (6 Brit. Crown Cas., *p. 384), and also in 5 Cox. C. C., 495, Mr. Baron ROLFE, (afterwards Lord CRANWORTH), laid down these propositions: "Those who are to employ labour may meet and say, 'we will not give more than such and such a rate, or we will stipulate for such and such a number of hours work; we will make, in short,

regulations beneficial to ourselves as employers, and we will agree that we will not take any workmen that require more.' On the other hand, the workingmen may meet and say *we will not work for less than such and such sums*, and if anybody thinks to employ us on low wages *we will not work for them*, and we agree to form a fund and support one another until we get them to come to proper terms. * * *It is doubtless lawful for people to agree among themselves not to work except upon certain terms.* That being so, I am not aware of any illegality in their peaceably *trying to persuade others to adopt the same view.*"

Indeed, unless this were true, as Dr. Wharton well remarks, "there are few joint operations for money making which would escape indictment. The regulation of industry would be left, *not to private enterprise and experience, but to the criminal courts.*"

2 Whart. Crim. Law, (9th ed.) Sec. 1366, pp. 215, 216, *n.*

Where the objection has taken the form that such agreements are in restraint of trade, well-considered cases have noted the important distinction asserted by counsel for the City of London in Player v. Vere, T. Raym., 324, 326, and not dissented from by the eminent Sir ROBERT SAWYER, who was adversary counsel, and so clearly recognized by Lord ESHER (23 Q. B. D., at 609), namely, "*This is not a trade but an employment.*" The concurrence of counsel and court was doubtless in recognition that in the Silk Throwster's case, as reported 2 Keb., 309, 310, the distinction, in respect of this branch of the law, between *manufacture* and *trade or commerce*, upon which this Court proceeded in United States v. E. C. Knight Co., 156 U. S., 1, had been authoritatively established.

So, Lord ELDON declared, when a contract came before him which involved personal services, in answer to the objection that it was in restraint of trade: "*The case of trade is perfectly distinct.*"

Morris v. Colman, 18 Ves., 437.

"Every trade is business, but *every business is not a trade;* to answer that description it must be conducted by *buying and selling*."

Doe v. Wetherell, 2 A. & E., 161;

Harris v. Amery, L. R., 1 C. P., 148, 158.

The fundamental distinction thus indicated has been fully adopted in the American courts.

Kentucky Bridge Co. v. Louisville etc. Ry. Co., 37 Fed. Rep., 567, 615-618, (Mr. Justice JACKSON);

Bloom v. Richards, 2 Oh. St., 387, 396;

National Benefit Co. v. Union Hospital Co., 45 Minn., 272, 276;

Queen Ins. Co. v. State, 86 Tex., 250, (full discussion).

And stands supported by the many rulings of this Court that mere personal services, however much they may *aid* commerce, do not constitute the doing of business, in the sense of commerce.

Nathan v. Louisiana, 8 How., 73, 81;

Paul v. Virginia, 8 Wall., 168, 183;

Munn v. Illinois, 94 U. S., 113, 165;

Budd v. New York, 143 U. S., 517, 541, 542, (approving Stone v. Yazoo etc. R. Co., 62 Miss., 607, 639, 640);

Brass v. North Dakota, 153 U. S., 391, 401.

And, considering the occupation of its broker members, the important purpose of an Exchange to *establish uniformity* could not be accomplished without prescribing *a schedule of commissions* to be charged. Unless observance of this schedule can be enforced, the usefulness of the body will be greatly impaired, if not wholly destroyed, and it will be impossible for it to "establish anything like uniformity in the business of its members."

People v. Fire Underwriters, 7 Hun, 248, 251, 252.

It necessarily follows from the rules established by these and kindred cases that such an association cannot be characterized as a *monopoly*,—a point likewise disposed of by Mr. Justice STORY'S opinion in Charles River Bridge v. Warren Bridge, 11 Pet., 420, 606, 607; by the decision in Railroad Co. v. Richmond, 26 Iowa, 191, 201, 202; 19 Wall., 594; and by the carefully prepared deliverance of Mr. Justice JACKSON in *In re* Greene, 52 Fed. Rep., 104.

LABOR UNIONS.

It was conceded by counsel in the circuit court that if the defendants were *laborers*, their organization would be valid. The authorities, if distinction in this respect they make at all, place Exchanges upon even a more favorable basis than Labor Unions, probably because experience has demonstrated that Exchanges have no tendency to bring about a resort to means which the law stamps as unlawful, and that the rules and operations are distinctively beneficial to the development of commercial intercourse. Certainly, there can be no valid reason for saying that a man ceases to be entitled to his rights as a freeman because his vocation happens to be that of a live-stock commission merchant. At the very least, it must be said that the rules of law in the premises apply to *all personal services alike*, whether they happen to be rendered in a work-shop or at a stock-yards, (137 U. S., at 415), whether the persons are skilled or unskilled, (18 Ves., 437), and whether their compensation is by way of wages, commissions, salaries, or fees, (86 Tex., 250).

X.

ANALYSIS OF BILL OF COMPLAINT.—REVIEW OF OPINION OF CIRCUIT COURT, AND OF INJUNCTION ORDER.

An analysis of the bill of complaint, and a review of

the order appealed from and of the opinion delivered in justification thereof, may serve to present some of the questions involved in more concrete form:

The Bill Analyzed.

Without setting forth in detail the allegations of the bill to the effect that the purposes of the defending Exchange are to *promote* and *increase* trade, and not to obstruct and restrain it, and the very great success which has attended the efforts and usages of its members, its contentions may be thus summarized and disposed of:

1. The extent, magnitude, and importance of the Kansas City Stock Yards are wholly irrelevant; they do not constitute it a *public market*, nor in any wise affect the rules of law to be applied to this case. It is a mere private enterprise and its character can be changed only by valid *legislation*. (American Com. Co. v. Chicago Live-Stock Exchange, 143 Ill., 210; Delaware etc. R. Co. v. Central Stock Yards Co., 45 N. J. Eq., 50; Express Cases, 117 U. S., 1.)

The bill of complaint in the present case was filed in December, 1896, and prior to the enactment of the present Kansas Statute declaring the Stock Yards to be public. The case must, of course, be judged as of the date of the filing of the bill; and there was no supplemental pleading.

Besides, the character of the Stock Yards in this respect has no effect on the status of commission merchants engaged in business there; their occupation is, in any event, a merely *private* one. (143 Ill., at 236, 237; 107 U. S., at 699.)

2. The first substantive allegation is that if the consignee of live-stock is not a member of said Exchange, he cannot sell or dispose of the same at that market "for the reason that such members, as required by the rules to which they have subscribed, refuse to

deal with a person who is not likewise a member." If it is meant to charge that members ever refuse to deal with a person *not engaged in acting as a commission merchant*, the allegation is overwhelmingly shown to be false in fact, and will be conceded to have been inserted by mistake on the part of counsel. In a legal sense, it would be immaterial, however, even if it were true; for the allegation is merely of a refusal to deal, "a mere passive, let-alone policy," and not of a resort to any means which the law declares to be unlawful, nor of a predominant malicious motive, elements essential even where the doctrine of Bohn Mfg. Co. v. Hollis, 54 Minn., 223, and kindred cases, is doubted or denied, (Jackson v. Stanfield, 137 Ind., 592, 613; Cote v. Murphy, 159 Pa. St., 420, 431.) The allegation has no tendency to prove a monopoly, for the services of the commission merchants being essentially private, business intercourse with them, has never been a matter of *common right*. "It is generally lawful for the combiners to withdraw their intercourse and its benefits from any person, and to announce their intention of doing so." (TAFT, J., 54 Fed. Rep., at 738.)

3. The allegation that the owner of live-stock is "compelled" to consign them to a member of the Exchange and "prevented" from otherwise reaching said market, thus being hindered, delayed, obstructed and put to extra expense and loss, followed by the charge that the Stock Yards Company allows no one but such members to transact business at its yards, were doubtless intended to wear an exceedingly formidable aspect. The market is shown to be open to all who may choose to come there, and the allegation that an owner of cattle is in any wise impeded in respect to it is shown to be palpably false. There is not the slightest basis for the allegation that the Stock Yards Company excludes all others, except the defendants, from access to the yards. Indeed, if such were the case, brokers could not do business: it needs

buyers and sellers to realize commissions. It was probably intended to charge that *if* a seller desired to employ a *non-member* broker, the latter would meet with a refusal on the part of members to have business intercourse with him.

Taking the allegation in its broadest possible scope, and considering it in a legal sense, there is not the slightest element of wrong in the situation alleged:

No one is "*compelled*" to do business at the Stock Yards or to employ a member of the Exchange. No force, violence or intimidation is visited on a live-stock owner, nor has any such owner bound himself to ship to such yards exclusively or to employ no one but a member of the Exchange. That the course of business and surrounding circumstances make it to the interest of an owner to ship to that market and to employ one of such members to act for him, even if the sole and precise effort of the associates has been and is now to create and maintain that interest, does not, under any case ever decided by any court, constitute an illegal combination or act in pursuance thereof.

It is true even in Pennsylvania, where the doctrine of Comm. v. Carlisle, admitted to be an extreme one, is still adhered to, and where Bohn Mfg. Co. v. Hollis, 54 Minn., 223, was therefore declined to be fully followed: To say to other dealers "that if they continued to sell plaintiff, the members of the association would not buy from them *is not a threat.* It does not interfere with the dealer's free choice. It may have prompted him to a somewhat sordid calculation. He may have considered which custom was most profitable, and have acted accordingly. *But this was not such coercion and threats as constituted the acts of the combination unlawful.*"

Cote v. Murphy, 159 Pa. St., 420, 431.

See, also, for full discussion, Macauley v. Tierney, 33 Atl. Rep., 1, and the opinion of DANIELS, J., in Thomas v. Musical Union, 2 N. Y. Supp., at 199, *et seq.*,

which was adopted by the Court of Appeals, (121 N. Y., 45.)

An owner is free to ship there or not, as he chooses; he may ship elsewhere or not at all. He may employ a member of the Exchange to act for him, or he may decline to do so. If it is to his interest he will doubtless make such shipment and employment; but to create the circumstances which produce such interest is not only lawful, but the exercise of a constitutional right.

4. *a.* The right to fix commissions, salaries and wages for services to be rendered, and to unite into an association or union for the purpose of creating uniformity and preventing rebates, discrimination and favoritism, or even for the very purpose of securing compliance with the schedule agreed on, has already been considered. The cases cited, *supra*, establish that such agreements are so clearly lawful that it is strange that there should ever have been any doubt on the subject, (28 Am. Dec., at 508; 2 Daly, at 11), and that they are beneficial to the parties and in nowise infringe upon the interests of the public (67 Fed. Rep., at 711). Where an Exchange is under consideration such a schedule is indeed absolutely essential to promote the purposes of the organization (People v. Fire Underwriters, 7 Hun, 248, 251, 252). The only recent case to the contrary is Moore v. Bennett, 140 Ill., 69. It has been pointed out, on an elaborate review of the authorities, that this case ignored the established and fundamental distinction (declared, among others, by Lord ELDON in Morris v. Colman, 18 Vesey, 437; by Lord DENMAN in Doe v. Wetherell, 2 A. & E., 161; by Mr. Justice JACKSON in Kentucky Bridge Co v. Railway Co., 37 Fed. Rep., at pp. 615, 618; and by MITCHELL, J., in National Benefit Co. v. Hospital Co., 45 Minn., 272, 276; and recognized in the subsequent case of American Com. Co. v. Chicago Live-Stock Exchange, 143 Ill., 210), between combinations to fix the prices of *commodities*, and agreements upon a schedule

or tariff of compensation to be made for *services* to be rendered.

Queen Ins. Co. v. State, 86 Tex., 250, 273.

In the leading case on the general subject of combinations to fix prices, this distinction is pointedly declared.

Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St., 173, 188.

b. The associates also have the right to regulate the number of solicitors to be employed and their qualifications and to prohibit the solicitation of business by means of prepaid telegrams. These and similar provisions are incident to every Exchange. In many of them members are prohibited from forming a partnership with a non-member and from employing clerks not approved by the governing committee. The London Stock Exchange does not permit its members to advertise at all, viz., no solicitors whatever can be employed, and forbids circulars to be sent to others than principals, which, in principle, is the same as regulating the sending of prepaid telegrams. The Paris Bourse prohibits the employment of more than two head-clerks. The Memphis Cotton Exchange prohibits the sending of a prepaid telegram. The restriction upon the number of solicitors to be employed protects the financially weaker members against the efforts of fellow-members who are able to employ an unlimited number of "drummers," and to gather all the business to themselves by means thereof. Dispensing with soliciting agents or the control of them would not be illegal; nor can an agreement relative thereto be an illegal contract. The prepayment of telegrams stands upon a similar footing. The public is not injured thereby, for it has no right to be visited and importuned by solicitors, nor to have telegrams sent to it free from expense.

Koehler v. Feuerbach, 2 Mo. App., 11.

A graphic picture of an actual occurrence pointedly teaches what disasters will surely befall an Ex-

change which permits its members to resort to reckless methods.

Hitch v. Hawley, 132 N. Y., 212, 213.

Of an arrangement between certain manufacturers to reduce the number of traveling salesmen, VAUGHN, B., said that "in consequence of the loss and inconvenience which the parties had before sustained, they entered into this agreement, by which the loss and benefit to each is reciprocal, * * a contract by which the public are not injured as they may be supplied on easier terms," *i. e.* the expenses of carrying on the occupation being reduced, lower charges may prevail or better service be rendered for the prevailing rate.

Wickens v. Evans, 3 Y. & J., 318, 330.

It is to be noted, however, that under the rule at bar, *actual sales* may be thus reported to a consignor and that *purchasers* may be invited to attend, whether members or not.

Such agreements are not only the basis of all Exchanges and other co-operative organizations, but are embodied in thousands of contracts of every character and description. Presumptively, this rule stands as the unanimous compact of the associates (143 Ill., at 233, 234), and as all interests concur in the propriety thereof, and as they are common to every similar Exchange in the land, no room is left for questioning the beneficial purposes and effect thereof. (105 U. S., at 563; L. R., 4 C. P., at 48; L. R., 10 Ex., 337, 353).

c. Having the right to make these regulations, it necessarily follows that the same can be enforced (Dos Passos, 40). Indeed, membership is held subject to the condition that none of the rules will be violated, and a violation, adjudged by the tribunal agreed upon, terminates the membership: by failing to observe the rules, a *member elects to withdraw.* (Wilson v. Lewis, 121 N. Y. 284; Greer v. Stoller, 77 Fed. Rep., 1, 8.)

5. Rule XVI. is the only limitation upon members as to dealings with others. Comparing that rule

with the provisions to be found on the same subject in other Exchanges, and with the agreements embodied in many contracts which have come before the courts, it will be observed that here the limitations upon the contracting parties are of *the mildest nature*. (Continental Ins. Co. v. Board of Underwriters, 67 Fed. Rep., 310; Dueber Watch Co. v. Howard Watch Co., 55 Fed. Rep., 851.) Dealings are not to be had with, *a*, persons violating the rules, nor, *b*, suspended or expelled members. As there is no absolute right to be a member, nor to have dealings with any given person, the limitation could have been broadened so as to prohibit the transaction of business with *all non-members whatsoever*, without infringing, in the slightest degree, upon any rule of law known to civilized jurisprudence. (Matthews vs. Associated Press, 136 N. Y., 333, 341.) It is to be noticed that there is no allegation in the bill of personal malice, or that the sole purpose was to injure another, or of a resort to any unlawful means. (Comm. v. Hunt, 4 Met., 111; Pettibone v. U. S., 148 U. S., 197, 203.)

Indeed, it is the distinguishing characteristic of an Exchange that all dealings had under its auspices shall be with parties subject to its rules and disciplinary jurisdiction. (White v. Brownell, 2 Daly, 329; State v. Chamber of Commerce, 47 Wis., 670, 683). If non-members are to be adjudged as entitled to the privileges, but free from the correlative obligations to obey the rules, why have Exchanges at all? The promise of such obedience is the condition upon which membership is granted and only by the performance of this contract can the privileges of membership be retained. (White v. Baxter, 9 Jones & S., 359; affirmed, 71 N. Y., 254; Walls v. Bailey, 49 N. Y., 464; Lewis v. Wilson, 121 N. Y., 284; Hyde v. Woods, 94 U. S., 523, 525).

6. The allegation that a monopoly was intended to be created might well be dis-

regarded as being a mere conclusion, without a sufficient statement of facts to support the same; but, construing the bill in the broadest sense, the intimation of a monopoly is readily dispelled:

a. The matter involved consists of mere *personal services*, to which the rule against monopolies does not apply, especially where the occupation is *a merely private one.* It is of *no interest to the public who serves them*, so long as the charges are reasonable and the facilities adequate. (Express Cases, 117 U. S., 1, 21, 24; Chicago etc. R. Co. v. Pullman Car Co., 139 U. S., 79, 89–91; Morris Run Coal Co. v. Barclay Coal Co., 68 Pa. St., 173, 188).

b. Membership in the Exchange being purely a matter of contract and not one of antecedent common right, there can be no monopoly in regulating who shall be entitled thereto, however great the inducement to the public to employ members of that body, so as to obtain the advantages of the association, and though such advantages can only be had by dealing exclusively with a member. (52 Fed. Rep., 104.)

Thus, the right of Exchanges to decide what property they will permit to be dealt in by its members or under the auspices of its rules has been firmly established, though the organization be so powerful that its refusal to admit a given article had the effect to make it practically *non-marketable.*

Young v. Cole, 3 Bing. N. C., 724;
Reg. v. Aspinall, 2 Q. B. D., 48, 61, 62, 63, 64.

c. The defendant Exchange does not even undertake to limit the number of its members, but offers membership to all reputable persons, without discrimination in any respect.

d. The Exchange itself is *not engaged in business*, and its rules merely constitute an "*honorary agreement*" between the members to conform to certain rules in their dealings.

Lord BLACKBURN in Tompkins v. Saffery, L. R., 3 App. Cas., at 232.

e. As the fines provided for cannot be recovered by suit, the only effect of a non-payment is a withdrawal from membership. So, also, a member can withdraw *at pleasure.* Hence, the agreement is binding only in honor and no longer than a member chooses to observe it. The only restriction is that a member will comply with the rules *so long as he elects to retain his membership.* (Greer v. Stoller, 77 Fed. Rep., 1, 8.)

7. The case of Thomas v. Musical Union construed a State conspiracy statute, quite as broad as is the Act of Congress of July 2, 1890, in the light of by-laws of an organization of musicians requiring each member to *refuse to perform in an orchestra or band in which any non-member was engaged;* to refuse to employ or engage a suspended member or non-member; and *to refuse to assist in any performance in which amateurs participated.* It was held by DANIELS, J., in the Supreme Court, (2 N. Y. Supp., 197–204, and 17 N. Y. St. Rep., 51), in an opinion which met the approval of the Court of Appeals (121 N. Y., 45), that a notice to a member that if he acted in violation of these by-laws by performing with or employing a non-member, he would be expelled was in no sense a *threat.* "*If he elected to continue a member of the union, then the by-laws required him to employ his fellow-members to the exclusion of other persons. If he was not satisfied to submit to that restraint, he was at full liberty to withdraw, and to employ whomsoever he might choose.*"

See, also People v. Barondess, 61 Hun, 571; Quincey v. White, 63 N. Y., 370, 376.

THE OPINION OF THE CIRCUIT COURT.

(Record, 267; 82 Fed. Rep., 529.)

a. The trial court approached the question of de-

fendants' guilt under the Act of Congress by declaring that *their rules alone* were not to be considered, but the "practical working and results of the defendants' methods" should also be looked to, and the latter were made the *sole* basis of the conclusions announced. Indeed, one would suppose from this branch of the opinion that Greer, Mills & Co. were complainants of record, in form as well as in substance.

The order of injunction, however, was not limited to given workings and results, but adjudges certain rules to be void *in their entirety*, and however construed or enforced.

The better rule, and the only one which can fairly be applied where the action is by the Government in the (at least nominal) assertion of a public interest, is to take the rules as having been *bona fide* entered into and as expressing the real purposes of the associates. Isolated acts by given members cannot serve to condemn the organization *in toto*. The general doctrine on the subject has been laid down by HAYES, J., as follows:

"The question whether a society has been established for illegal purposes or not, ought, as I think, with rare exceptions, to be decided *by the rules themselves*, which declare the objects of the society and speak *the voice of all its members*. * * * If the rules are legal in themselves, it is, I conceive, the duty of the officers to carry them out legally. The best of rules may be abused in practice, but if, in such a case, the abuse is the fault of *individuals*, it ought not to be viewed as affecting the rules themselves or the general purposes of the society to which they belong."

Farrer v. Close, L. R., 4 Q. B., 602, 618.

The views of HANNEN and HAYES, JJ., in this case were accepted in Arthur v. Oakes, 63 Fed. Rep., 310, 327, where it was also laid down by Mr. Justice HARLAN, as the organ of the Court, that in such a case an order of injunction, if granted, should not condemn the rules indiscriminately and as a whole, but, on the contrary,

the precise wrongful practices should be carefully described.

The same principle was applied by Judge McKenna in the elaborately considered case of Continental Ins. Co. v. Board of Fire Underwriters, 67 Fed. Rep., 310, 322. After holding that it would be extremely inconsequential to say that the rules were adopted for the primary purpose of maliciously injuring others, or for any other reason than those which the law permitted, that learned judge dissolved a general restraining order and substituted one enjoining a few acts, specifically described, which he adjudged to be unlawful, (323).

b. In the case at bar the circuit court proceeded to point out the extent of the Kansas City Stock Yards and the magnitude of the business there carried on, of all of which the defendants were, at another point of the opinion, declared to be the "*active promoters*", and then found that the operation of Rule XVI. was to "*shut out all dealings and business intercourse between members and non-members of the association.*"

This conclusion was predicated of a construction that that rule necessarily means that *all who are not members* of the Exchange are *violating* the rule. In other words, that *a failure to join*—mere non-action—operated as the equivalent of an *affirmative violation.* It has been generally supposed that such a provision, whether found in a statute, or in a private contract, meant that a violation consisted of affirmative action *contrary to* a given course, (People v. Produce Exchange, 149 N. Y., 401, 410). And even if the circuit court had desired to forbid the Exchange from advising its members that a given person was not a member of the Exchange to the end that they might stand advised that in dealing with such person they would not have the protection afforded by the rules, (especially, sections 6, 7, 8 and 13 of Rule IV., Rules VII., XV., XVIII., and XXI.), or for any other similar purpose, and to use the means of communication agreed on for that purpose—

the general bulletin board—,it is to be noted that the injunction order was not limited to such a course of conduct.

c. Be the construction of the rule what it may, it is to be noted that *mere business non-intercourse* is the extent of the wrong claimed to have been done, and this is characterized to constitute a "*boycott.*" This definition of unlawful means is substantially the whole superstructure of the opinion upon the merits of the case.

It is ventured that there is no case in the books, recognized as authority at the present day, which lends support to such a conclusion. The cases of Cote v. Murphy, 159 Pa. St., 420; Jackson v. Stanfield, 137 Ind., 592, and Macauley v. Tierney, 33 Atl. Rep., 1, establish the converse most clearly, and, as Judge TAFT said before the American Bar Association, in 1895, there is no Federal case to a contrary effect. Even Judge JENKINS, in his overruled opinion in Arthur v. Oakes, (60 Fed. Rep., at 824), frankly modified his original injunction so as to avoid a possible construction in accord with what the circuit court expressly ruled in the present instance.

The explanation of the views laid down in the opinion at bar is readily to be found in the fact that the same court had previously ruled that all associations to accomplish a given end were unlawful, without regard to whether the act or the means were of themselves unlawful; in short, that all *combination was necessarily conspiracy.*

> Oxley Stave Co. v. Coopers' Union, 72 Fed. Rep., 695, 698.

Assuming the facts of that case to have been that the defendants were moved by a malicious purpose to injure the plaintiff and that, to this end, they, without having a just cause or excuse, used "threats" and exercised intimidation against third persons, who were in no wise concerned in the principal controversy, the order made is warranted by the cases elaborately re-

viewed in Consolidated Wire Co. v. Murray, 80 Fed. Rep., 811; and it was upon this view of the facts of the case that the order made was affirmed on appeal, November 7, 1897,—so recently that the latter opinion has not yet been reported.

The circuit court, however, took occasion to express this view of the law: "No one can question the right of the defendants to refuse to purchase machine-made packages, or of goods packed in them, or, by fair means, to persuade others from purchasing or using them. If that is all that is implied by a boycott, as insisted by defendants,it is difficult to see where they violate any law, although it might injure the complainants' business. *It has been decided, however, that while such action would not be unlawful by an individual, a combination or conspiracy to accomplish the purpose would be an unlawful act.*" (72 Fed. Rep., at 698). Arthur v. Oakes, 63 Fed. Rep., 310, is supposed to warrant this statement. Yet that case turned upon the precise distinction between a combination acting "*so as*" to injure another, and one whose *sole or real purpose was to maliciously injure without cause or excuse;* and the distinction thus established stamps the conclusion that a combination for a lawful end by lawful means is an illegal conspiracy, to be fundamentally erroneous (Consolidated Wire Co. v. Murray, 80 Fed. Rep., at 828).

This distinction was carefully observed by the Circuit Court of Appeals in affirming Oxley Stave Co. v. Cooper's Union, *sub nom.*, Hopkins v. Oxley Stave Co., Nov. 7, 1897. It was there said that "while the courts have *invariably* upheld the right of individuals to form labor organizations for the protection of the interests of the laboring classes and have denied the power to enjoin the members of such associations from withdrawing peaceably from any service, *either singly or in a body*, even where such withdrawal involves a breach of contract (citing Arthur v. Oakes, 63 Fed. Rep., 310), yet they have very generally con-

demned those combinations usually termed boycotts, which are formed for the purpose of interfering *otherwise than by lawful competition* with the business affairs of others and depriving them *by means of threats and intimidation* of the right to conduct the business in which they happen to be engaged according to the dictates of their own judgments. * * Persons engaged in any service have the power, with which a Court of Equity will not interfere by injunction, to abandon that service either singly *or in a body* if the *wages paid* or the conditions of employment are not satisfactory." It was said that whether it be true that many may not combine to do what an individual can lawfully do *depends upon circumstances, i.e.*, the elements of *malice, without just cause or lawful excuse*; of the nature of the *means* resorted to; and whether *third persons*—strangers to the controversy—are undertaken to be coerced (in a legal sense) by the use of unlawful means. The above quoted paragraph from the opinion of the circuit court is substantially condemned by the appellate court, and it is to be noted that the latter cited Arthur v. Oakes, for the precise *converse* of the proposition which the circuit court had construed it to hold.

A casual glance at the books will disclose that Lord ESHER is generally (and properly) regarded as holding views of the extremest character upon this general question. His charge in Reg. v. Bunn, 12 Cox C. C., 316, was overruled in Gibson v. Lawson, 1891, 2 Q. B., 545, 560, and he was the only dissenting judge in Mogul SS. Co. v. McGregor, 23 Q. B. D., 598. In both instances, however, he clearly recognized the right of persons engaged in an occupation to associate themselves for their mutual advantage. He also wrote the much canvassed opinion in Temperton v. Russell, 1893, 1 Q. B., 715. And yet that very learned and experienced judge (as Lord Justice BRETT) was careful to say (as indeed he had previously declared in Reg. v. Bunn, *supra*), and under circumstances of the utmost gravity,

that "*it is not, of course, every agreement* (between two or more persons to accomplish a certain end by concerted action) *which is a criminal conspiracy.*"

Reg. v. Aspinall, 2 Q. B. D., 48, 59.

The distinction between injury as *the result or consequence* of given action by another, and damage proximately caused by a combination entered into for *the sole or real purpose of maliciously wronging another* without lawful excuse, is as fundamental as it ought to be elementary.

Day v. Brownrigg, 10 Ch. Div., 294, 303;
Rogers v. Rajendso Drutt, 13 Moore, P. C., 209;
Ratliffe v. Evans, 1892, 2 Q. B., 524, 527.

d. Holding the views it had expressed in Oxley Stave Co. v. Coopers' Union, *supra*, it is not difficult to understand why the circuit court adopted the general statements in the complainants' affidavits that Greer, Mills & Co. had been "boycotted" as *proof conclusive* of a conspiracy.

It is to be observed that these allegations are *mere conclusions.* They constitute no evidence of the fact. To make such proof it is necessary that a statement of *facts* shall be made and shown from which the Court can pronounce that a "boycott" is disclosed. That word has become quite as much a term of art as are "fraud," "damage," and others which the law uses. One cannot say generally that he has been defrauded or damaged, but he must show a state of facts which, in law, warrant the conclusion asserted.

1 Whart. Ev., § § 507, 509.

"The correctness of the ascription of a purpose to the parties" depends upon *language used or acts done,* and cannot be covered by statements of *legal conclusions* or of an *argumentative nature.*

Dillon v. Barnard, 21 Wall; 430, 437;
United States v. Ames, 99 U. S., 35, 45;
Pullman Car Co. v. Mo. Pac. R. Co., 115 U. S., 587, 596;

Fogg v. Blair, 139 U. S., 118, 127.

Epithets and conclusions are to be discarded in determining whether a case has been made out.

Kent v. Canal Co., 144 U. S., 75, 91;

Chicot County v. Sherwood, 148 U. S., 529, 536.

e. Besides, *there is no allegation of a "boycott" in the bill*; consequently, a consideration of the element was wholly without the province and jurisdiction of the Court. (11 Wheat., at 189; 10 Wall., at 303). Indeed, as hereafter shown, a mere *private* "boycott," however reprehensible, could not be made the basis of a public action.

f. In striking contrast to the statement that the defendants aspired to a monopoly is the finding that "it appears from the testimony that any person or partnership attempting to carry on business independent of the association, *is invited to apply for membership!*"

Even if "the manifest intent of the association is to induce all those engaged in the same occupation to become members of it, *such a purpose is not unlawful.*"

Comm. v. Hunt, 4 Met., 111, 129.

It is established law that the associates may use all lawful purposes to that end; and that mere withdrawal of business fellowship is not unlawful.

Macauley v. Tierney, 33 Alt. Rep, 1; 19 R. I., ——.

g. That a non-member competitor cannot prevail against "the combined opposition of three hundred men" does not prove the associates to be criminals. Upon the same theory every successful competitor can, because of his success, by reason of his association with others, be characterized as a wrong-doer. On the contrary, as "the effort of all competitors is to drive out competitors," (70 Fed. Rep., at 388), the success of the effort cannot be a crime!

h. The statement that the object and purpose, "written across the face of the Exchange where all can read," were "to control and monopolize the entire

business of buying and selling live stock at the Kansas City Stock Yards" is wholly unwarranted. The Exchange, as such, *is engaged in no business of any kind whatever*; its rules "are merely machinery for bringing the two parties (principal) together" (L. R., 6 Q. B., at 327; 67 N. Y., at 142), and its members do not *buy* and *sell*, in the sense of dealers or owners. On the contrary, they are merely exercising *a private occupation*, a matter so plainly distinct (Morris v. Colman, 18 Ves., 437), that it is "written across the face" of every law book on the subject. (Union Stock Yards Bank v. Gillespie, 137 U. S., 411, 415, 419). Hence, it is that "*that class* of trade or commerce"—the buying and selling of live stock—is not restrained or monopolized by the Exchange or its rules, (86 Tex., 250), but it is encouraged and promoted to a greater extent than by any other adjunct or agency known to human ingenuity.

The ambition or desire to act as commission merchants in every instance in which an owner concludes or finds it to his interest to employ one, embodies the commendable aim of every industrious man engaged in an occupation, and the right to entertain it and to succeed in reaping the fruits of success cannot be declared to be unlawful, however great the resulting loss to others. (143 Ill., 210, 234).

i. It was admitted that "possibly" the regulations of the Exchange "are all reasonable and fair and for the best interest of buyer and seller," but this was followed by a series of suggestions which would amply justify the defendants in complaining of unfair treatment, were they so disposed, (Record, 269.)

What right has the stock-grower, the purchaser, or the public, to demand that traveling agents shall visit them, or to object to a limitation as to the number of *solicitors* to be employed in a private occupation, or to require that *prepaid* telegrams shall be sent? What harm done by the rules on the subject? As these

rules embody the unanimous compact of the members, who shall say that they are unreasonable or harmful to trade? (143 Ill., 210, 233, 234; L. R., 4 C. P., 36, 48.)

It was wholly unwarranted to remark that the rates of commissions had been *raised*, even doubled, since the organization of the Exchange in 1886. On the contrary, the silence of the bill on the subject is of itself conclusive that there is no room for complaint in the premises, and the proof is uncontradicted that *identically the same rates* had prevailed at Kansas City for fifteen years before the Exchange was formed and (then and ever since) at all other live-stock markets.

The rebuttal affidavits disclose that formerly a system of *secret rebates* and of discriminations in favor of large shippers had been practiced. But are we to be told that when so odious and reprehensible a practice has been suppressed by legislation, or by the rules of an Exchange, the public has been injured? (People v. Fire Underwriters, 7 Hun, 248, 251, 252.) Or, that if such a practice is found to bring a market, or an occupation, into disrepute, or to move non-favored shippers into sending their consignments elsewhere, that those interested in building up the market and in maintaining the confidence of the public that the same treatment will be accorded to all patrons, be they large or small, rich or poor, friends or strangers, must sit supinely by and be debarred from taking steps to remedy the great and growing evil?

And why criticize Section 8 of Rule IX. as involving a discrimination in favor of a few localities and denounce it accordingly, and in the same breath mandatorily enjoin the practice of a *much more extensive discrimination* throughout "the whole field of operations," covering many States and Territories?

But, as already said, it was wholly inaccurate to say that under the existing rules there were "discriminating charges on stock from different localities." The clause referred to (section 8 of Rule IX.), merely regulates the

matter of *dividing commissions with non-resident commission merchants* on stock shipped to Kansas City from certain other and competing markets. Such division involves no element of discrimination; on the contrary, it serves to attract consignments and thus to the promotion of trade.

Scott v. Lloyd, 19 Colo., 401;

McLaughlin v. Barnard, 2 E. D. Smith, 372.

Indeed, why could not a so-called discriminating schedule be adopted, by which shippers who are located so as to have the choice of many markets would be induced to select Kansas City? What wrong would there be in this to those whose situation was materially different? Must the defendants forego the opportunity to sell Illinois cattle because if the commissions are the same the owner will ship to Chicago or St. Louis? While no such regulation has been made, many trade reasons would justify a provision on the subject.

Merchants' Bank v. Pennsylvania, 167 U. S., 461, 463.

j. Answering the showing of the defendants that Exchanges have been demonstrated to be "*essential, if not indispensable, to the business interests of the country*," and the argument of their counsel that a decree for the Government, as prayed, "would be *a death-blow to these institutions*," the circuit court, conceding that it could not shut its eye to the result of its conclusions, said that *it was not necessary to discuss how far these considerations should control its action.* To the contrary of this ruling, such a showing and argument demonstrate, 1, that such bodies cannot possibly be in restraint of or injurious to trade; and, 2, the considerations mentioned are of *decisive influence* in construing an Act of Congress designed to benefit, and not to injure, the trade or commerce of the United States, (143 U. S., 457, 472; 162 U. S., 197, 218, 219; 62 Fed. Rep., 914, 918.)

k. It was then said that it might be admitted that

Exchanges were beneficial "to the members and, perhaps, *to the locality*" where they are situated.

It is difficult to understand how members whose ability to earn a livelihood depends entirely upon the result of their efforts to encourage and facilitate trade can be benefited without a corresponding advantage to the trade thus promoted; and utterly impossible to appreciate that it is *an advantage to a given locality* that an Exchange should exist in its midst *but injurious to the country at large.* Indeed, the very fact a great local market is thus built up is proof conclusive that the tributary territory is correspondingly benefited, for it is *that territory* which reaps the advantages of such a market, (KELLY, C. B., in Grissell v. Bristowe, L. R., 4 C. P. at 53; Lord BLACKBURN in Speight v. Gaunt, L. R., 9 App. Cas., at 21; La Marchant v. Moore, 44 N. E. Rep., 770, 772; Skiff v. Stoddard, 63 Conn., 198; Rosenstock v. Tormey, 32 Md., 169, 177).

Logically, the suggestion would make it impossible *to build up large cities*, and means that an agency cannot benefit commerce unless it is *actually physically present* upon every inch of territory within the limits of which its influence is felt!

The narrow view of a local benefit only, is strikingly at variance with the statements at another page of the opinion that the "defendants are *active promoters;* * * they reach out over *many States and Territories*, by their solicitors and advertisements, and gather in for sale *millions* of cattle, sheep, and hogs, and their rules and regulations cover the *entire business*, and extend over the *whole field of operations;*" from which it necessarily follows that the influence of those rules, for good or evil, must be as extensive as the field referred to.

l. The necessity of having properly conducted agencies for the marketing of articles of commerce was fully admitted, subject to these limitations:

1. Such an agency "should not be permitted to

tamper with or in any way impede or restrain the natural flow of industry or commerce;"

2. Heed should be given to "the crying complaint of to-day" that the tendency of wealth is to monopolize the products and industries of the country; and

3. Many of the so-called Stock and Produce Exchanges are being used for *gambling purposes.*

The first limitation assumes the very point in controversy: whether Exchanges do *impede* and *restrain* the transaction of commerce.

As to the second, the observation of the circuit court seems to have led it to confound the assumed tendency of wealth to form "trusts" with the operations of the assumed and denounced stock and grain gamblers. The persons in question are *not the same* and their respective aims are *wholly at war.* However, neither their status nor their objects are at all pertinent in this case.

The proof shows that the occupation of commission merchants at the Kansas City Stock Yards has never yielded a competency, much less a degree of wealth constituting "a menace to the welfare of the people," to a single member of the Exchange. The security afforded by their rules, their high standing in financial circles, and the confidence that through their Exchange mortgaged live-stock will always be advantageously disposed of, and the proceeds honestly accounted for, doubtless unite to enable them to provide, by discount and borrowing, the loans mentioned in the bill as having done so much to build up and maintain "a great and growing market." In all probability, some of the members are possessed of a greater or less amount of capital which they can thus loan. But which of these circumstances involve any public injury or restraint of trade?

What bearing gambling (if any there be) at other Exchanges, of which the circuit court took judicial notice, can possibly have on the present case, is not perceived. Certainly, the only transactions ever had at these yards consist of *actual sales and physical deliv-*

eries. Indeed, the rules of nearly every reputable Exchange peremptorily forbid mere Option dealings.

Bibb v. Allen, 149 U. S., 481, 491, 493.

In a most recent case, a learned court, whose observation and experience in such matters have necessarily been exceedingly great, declared, speaking of this very subject: "There are *so-called* Exchanges or offices in many cities in which some persons assume to speculate" in such a way as to constitute gambling, but dealings on "a *regular Exchange*" evidence "*legitimate and lawful business*," to such an extent that by means of the records kept and reports published by the organization any departure from its inhibitions against irregular dealings, is readily disclosed.

Prout v. Chisholm, 47 N. Y. Supp., 81 N. Y. State Rep., 376, 379, 380, 381.

So in Skiff v. Stoddard, 63 Conn., 198, 206, it was found that "the rules of the New York Stock Exchange require that all sales made by brokers belonging to said Exchange shall be actual, *bona fide* transactions." Also, Harvey v. Doty, 27 S. E. Rep., 943, 946.

At its 1872 meeting the National Board of Trade, by resolution, expressed "its *decided disapproval* of a system which substitutes reckless gambling for fair dealing" and urged "upon the commercial organizations of the country the making of such rules as will cure the evil." (Report, 1872, p. 116).

Twenty years later, one of its members, during a discussion of proposed Anti-Option legislation, boldly asserted: "I say this—and *I defy any man to dispute it* —that there are no transactions on any Boards of Trade in the United States that do not represent, and which must not be paid for by, the *actual property* represented by the transaction." (Report 1892, p. 223.)

The Supreme Court of Missouri, in 1893, reviewing the course of business on the Kansas City Board of Trade, found the facts to be (the italics being from the opinion) "*that Kansas City was not in any sense a*

speculative grain market. That although it had become one of the great grain markets of the world, it was so in the *actual* receipts and sales and shipments of grain, etc."

State *ex rel.* Attorney-General v. Smith, 114 Mo., 180, 191.

"There are no such things as time bargains on the Stock Exchange."

LINDLEY, L. J., in Thacker v. Hardy, 4 Q. B. D., at 689;

Ex parte Grant, 13 Ch. Div., 667, 671.

"Such bargains are practically unknown on the Stock Exchange where contracts for the payment or receipt of differences are never made."

Melsheimer, Stock Exchange, 31;

Bisb. & Sim., Produce Exchanges, §212.

The broad assertion of the circuit court is contradicted by the earnestness with which typical Exchanges have contested the efforts of "bucket shops," and other irregular institutions, to obtain their quotations. (15 Fed. Rep., 849; 17 Fed. Rep., 825; 22 Fed. Rep., 23.)

It is to be noted that the anathema of the circuit court was explicity limited to that class of dealings which "the courts have *uniformly condemned*," and which "is under the *ban of the law.*" Hence, it cannot be said that the district judge merely utilized the occasion to express, *obiter*, his personal unoffiicial views upon the subject of contracts for future delivery. His language is not susceptible of such a construction. Being a "thoughtful observer" (Record, 270,) he must be taken to have known that such contracts are *not illegal* (Irwin v. Williar, 110 U. S., 499; Bibb v. Allen, 149 U. S., 481, 492; Hanson v. Boyd, 161 U. S., 397, 406); that Congress has repeatedly refused to legislate in antagonism to such dealings; that "the fact that speculation was the object *is of no legal importance whatever*" (COOLEY, J., in Gregory v. Wendell, 40 Mich., at 437); and that the law does not permit a court to declare a

gambling intent *in the absence of proof*, the presumption being against such an intent (Mr. Justice BREWER in Bangs v. Hornick, 30 Fed. Rep.,at 99).

With due deference, the circuit court ought to have adopted the eminently proper reply of Lord BRAMWELL (4 Q. B. D., at 692,) when such an argument was pressed upon him: "THAT IS NOT THE POINT WE HAVE TO CONSIDER."

Clarke v. Foss, 7 Biss., 540, 547, 548, 553, 555; affirmed on appeal, Ward v. Vosburgh, 31 Fed. Rep., at 15; approved as being a "most full and exhaustive discussion." (Gilbert v. Gauger, 8 Biss., at 218); and supported by the conclusion reached in Hansen v. Boyd, 161 U. S., 397, 405, 408.

The briefs below indicate that the sources of information relied on for these statements were a published interview with Gov. Tanner of Illinois and an extract from one of Bulwer's novels. The Trust Act may be sweeping in its provisions, but it is a startling proposition that it was intended to reach gambling or even illegal option dealings, and, if possible, even more so that it has transformed *actual* sales and deliveries of *lawful* commodities into mere *wagers*. These criticisms are not only exceedingly unjust, but, especially when falling from a Federal bench, they are much calculated to arouse a wholly unwarranted prejudice against institutions in the absence of which our country would, in in all probability, cease to be a trading community or a commercial factor. (Bisbee & Simonds, Produce Exchanges, Preface, VI.)

m. The court then construed the Trans-Missouri case to hold that commerce is to be permitted "to flow in its natural channels, unrestricted by any combinations, contracts, or conspiracies, or monopolies, whatsoever."

It is to be observed that *when commerce is done by means of the facilities provided by an Exchange*, invoked by the persons engaged in such commerce, IT IS DECIDEDLY FLOWING "IN ITS NATURAL CHANNELS." For, as

has been said in many of the cases and text books, cited *supra*, practically all the trade, in America and in Europe, in given commodities, is thus carried on; and experience, and the consensus of mercantile opinion and of the views of political economists and thoughtful statesmen, concur that an interference with such bodies would mark the severest blow to commerce which the ingenuity of a commercial rival could possibly inflict.

n. It is a striking fact—and particularly so because the entire scope and tenor of the opinion were dominated by a manifest spirit of deep hostility—that no word of criticism is to be found in respect of the right to agree upon a *schedule* of *commissions* to be observed by members of the association.

The Order of Injunction Considered.

The order of injunction which this Court is called upon to review is, if possible, even more vulnerable to criticism than the opinion filed in its support.

Primarily, it is to be noted that the order goes far beyond the terms of the opinion, and, in several important particulars, it adds to the scope of the bill and its prayer.

a. The defendants are enjoined "from combining by contract, agreement, or understanding, express or implied, So as by their acts, conduct or words, to interfere with, hinder, or impede others in shipping, trading, selling or buying live-stock, &c." As was said in Arthur v. Oakes, 63 Fed. Rep., 310, 317, 318, where the very words "*so as*, etc." (313, 317) were the basis of the reversal, such a clause embodies *the quintessence of slavery!* The idea that American citizens cannot, by way of an implied understanding, or even express contract, carry on their business *so as* to impede a competitor would ordinarily be unhesitatingly stamped as a monstrous suggestion. What mercantile partnership is not

open to the same injunction? (Planters' Compress Co. v. Ireys, 16 South. Rep., 386).

Considering the situation before the court, the clause can have practical application only to competing commission merchants, or, to be specific, to Greer, Mills & Co. It is not limited to a combination whose *sole or real purpose is to maliciously injure another without just cause or excuse*, or to a conspiracy to use *unlawful means*. And in the absence of such an element, the order is violative of fundamental rules of law and of constitutional guaranties. The suggestion that *the exercise of a lawful right by lawful means* can be enjoined because the result or consequence,—as distinguished from a purpose to accomplish the same end from malice and without the justification of a lawful self-interest, or by a resort to unlawful means,—may prove to be an impediment to some other person, and especially when that other person is a competitor, is without a parallel in civilized jurisprudence. The discussions in Toledo Ry. Co. v. Pennsylvania Co., 54 Fed. Rep., 730, 738; Arthur v. Oakes, 63 Fed. Rep., 310; and Continental Ins. Co. v. Fire Underwriters, 67 Fed. Rep., 310, to say nothing of the multitude of other cases on the same subject, leave no room for doubt in the premises.

b. The defendants were also broadly enjoined from enforcing, recognizing or acting under either Rule IX. or Rule XVI., and each and every section thereof and any and all amendments thereto.

It is thereby asserted to be *per se* and conclusively unlawful for persons engaged in a private occupation to agree on a schedule of wages or commissions, or concerning the manner of conducting their occupation in respect of solicitors or prepaid telegrams, or that they will not "transact any business with any person violating any of the Rules and Regulations of their Exchange, or an expelled or suspended member."

The making of an agreement to these ends is not

only the exercise of a lawful right but the right is sanctified by a constitutional guaranty. That a schedule of wages may be agreed on and adhered to has been declared to be so clear that it is strange that any one should ever have doubted it. Such an agreement cannot be adjudged to, of itself, restrain trade. Whether it does so in any case must depend upon superadded conditions, in respect of the public character of the associates, or of a resort to unlawful means, none of which are pleaded or proved in this case or carried into the decree.

To deny the right to refuse to deal with another is but another way of *compelling* the party enjoined to deal with persons against his will, and, when the matter involved is one of private personal service, such a decree is, in the language of Arthur v. Oakes, not only violative of natural liberty, but also marks a return to the state of slavery which the Thirteenth Amendment has hitherto been supposed and hoped to have forever exterminated on American soil. (See, also, 114 Mo., at 199, 200). Here, although a person may have been expelled for the *grossest fraud* or *most flagrant dishonesty*, a mere refusal to deal with him is declared to be a crime and involves a contempt of court!

c. In line with this mandatory provision is a further injunction against the enforcement of any fines or penalties upon *members of the Exchange* for trading or offering to trade with any person whatsoever, etc. It is conceded even in the extreme case of Temperton v. Russell, 1893, 1 Q. B., 715, that the associates "had a perfect right to do this so as to bind *their own members* and they had a right to *insist on obedience* to their rules from such members."

d. Discrimination in favor of members because of membership, "and especially from in any manner discriminating against any person," (without regard to the reason therefor, whether good or bad), are also enjoined. (61 Ill. App., 349.) This strongly emphasizes Dr.

Wharton's sage conclusion that given notions of the law will transfer the regulation of mercantile matters to the *criminal* courts; for it must be borne in mind that nothing can be enjoined under the Act of Congress unless it constitutes a crime under section one or two.

e. A refusal, "by united or concerted action, or by *word, persuasion*, threat, or *other means*, (even if it be mere individual action), to deal with persons who are not members, because of such non-membership" is also enjoined.

There is no allegation in the bill or evidence in the case of a *threat* by a single defendant, as that word is defined by all the cases. And the right to act by "word, persuasion, or other means," (for the element of *unlawfulness* of means is studiously omitted), has been conceded even in the cases where the provocation to extend the established rule was exceedingly flagrant. (54 Fed. Rep., at 738; 62 Fed. Rep., at 820; 67 Fed. Rep., at 711; 80 Fed. Rep., at 828; 82 Fed. Rep., at 42). The apprehension of a member that by violating Rule XVI. he will endanger his membership does not prove that he has been made the victim of unlawful means (Quincey v. White, 63 N. Y., 370, 376).

f. Nor may the defendants and each of them, "collectively or otherwise" (individually), in any manner interfere with the right and freedom of all persons to deal at said Stock Yards, "*the same as if such Exchange did not exist.*" That is to say, if any defendant interferes "in any manner," even by exercising a *lawful right* in a *lawful manner*, to-wit: because he does not choose to deal with a party; because the business methods of such party are detrimental to the best interests of the market; because the party is disreputable or insolvent; because the defendant's own interests in life, his "just cause and excuse," move him to such refusal; because competition, as he sees it, *necessarily implies interference with a competitor*; because he has agreed, upon a valuable consideration,

not to thus deal (Dos Passos, Stock Exchanges, 40, 43-45); or for any other similar reason, or for no reason at all,—in either event, he is conclusively guilty! If this be the law, no one has ever before so said; and certainly the Trans-Missouri case does not decide it.

g. The next clause of the injunction specifically enjoins any agreement whatever, directly or indirectly, fixing commissions, or limiting the employment of solicitors or the sending of prepaid telegrams, matters already adverted to.

h. The order of injunction must impress one, as does the opinion, that this case was treated to be *in form*, (what the Record shows it to be *in fact*), a suit by Greer, Mills & Co.—who are conceded to have been lawfully suspended from membership because of the non-payment of a fine properly assessed against them in accordance with the rules, (Greer v. Stoller, 77 Fed. Rep., 1),—for the purpose of reinstating a membership thus adjudged to have been voluntarily surrendered and lost by their own misconduct. The order of injunction proceeds on no lines of public interest. Indeed, if the same rules were generally applied, probably not a single association of persons, mercantile or professional, in these United States would survive, and certainly it would be difficult to discover wherein an American citizen differed from the *serf* or *vassal* of the Dark Ages.

Mogul Steamship Co. v. McGregor Considered.

The view taken below that *all* the cases declaring or recognizing *any* of the rules of law or statements of historical experience which are recorded in the exhaustively considered opinions in Mogul S. S. Co. v. McGregor, 21 Q. B. D., 544; 23 Q. B. D., 598; 1892, App. Cas., 25, or which have since approvingly referred to that case, are henceforth to be deemed erroneous in the Federal jurisdiction, prompts a brief notice of what Judge McKenna has declared,—"from the distin-

guished character of the judges and tribunals who decided it, and the consideration it received, and its approval by American cases,—must be regarded as *high authority*." (67 Fed. Rep., at 314.)

Primarily, it is to be noted that Lord ESHER distinctly recognized that even his dissenting views did not apply to a case of an association by persons engaged in *a mere private occupation* (23 Q. B. D., at 609), as these defendants are; so that the remarks of this Court concerning that citation (166 U. S., at 334, 335), might be safely passed by as being equally inapplicable to the present controversy, even if such an Exchange as this is to be judged by the rules applicable to associations of persons generally. And it is not to be understood, because of this reference to that case, that the appellants concede that their defense must be judged accordingly as the conclusions there announced are deemed to be correct or erroneous, in whole or in part. The importance of the general question of the proper scope and construction of the Act of Congress of July 2, 1890, is believed to justify a seeming diversion, in the interest of the symmetry of the law, and, perchance, to avert a repetition of the misconception of the views of this Court upon the subject which has been so extensively entertained in respect of the Trans-Missouri case.

The only real bearing which the McGregor case had upon the case then before this Court was as an instance of an association between carriers, charged with a public duty, for the purpose of fixing rates, and the criticism of this Court was carefully limited to so much of what was said in that case as could properly be declared to have been displaced by the statute under consideration. The vice of the Trans-Missouri Freight Association was found to be that its rules evidenced a *contract in restraint of trade*. That phase of the matter was but incidentally alluded to in the McGregor case, and then only for the purpose of

criticising the statement of CROMPTON, J., in a previous case, that such a contract was illegal in the sense that it was a criminal conspiracy to enter into the same. No one pretended that the Freight Association was a *conspiracy*, nor, indeed, that it was or tended to a *monopoly*. So far as the element of agreeing on prices or the rates to be charged by parties engaged in trade or commerce (at least when charged with a public duty) is concerned, the matter if unlawful, is one of *contract* or *combination*. But when it is asserted that certain action has been taken to the injury of another, *ex. gr.*: violence, threats, intimidation, or a "boycott" resorted to, whereby trade has been restrained, the guilt of the defendants must depend upon whether a *conspiracy* is shown. The former is a matter of *contract;* the latter of *tort*. It is precisely as if the statute read "whoever shall restrain trade by means of a contract, or a tort, shall be guilty, etc." When tortious action is relied on to prove a violation of the Act, such action must, self-evidently, involve, *a*, a *tort*, and, *b*, a *conspiracy* to commit or consummate the same.

United States v. Debs, 64 Fed. Rep., 724, 747, 748.

Whatever other changes in the law may be said to have been wrought by that Act, it is clear that it has not undertaken to revolutionize the essential and fundamental characteristics of a *conspiracy* nor to declare action, which is otherwise incontestably lawful, to constitute a *tort*. It is still necessary to a conspiracy (to use Lord DENMAN'S antithesis) that (at least) the purpose of the associates was to accomplish a wrongful end or to resort to unlawful means (Wright Crim. Consp., Carson's ed., pp. 48-52). To illustrate, when it is asserted that a lawful association, *i. e.*, a corporation formed under a State statute, for lawful business purposes (Bibb v. Allen, 149 U. S., 481, 489), not charged with a public duty, has assumed such an attitude towards a person bent on sharing all the ad-

vantages of that commercial club without being a member thereof, or content to bear any of the obligations of membership, and, because his demands are not slavishly acceded to, thereupon determined to overcome the associates by a course of conduct at variance with their rules and (if successful) destructive of their organization,—~~that it~~ has become converted in a *conspiracy* under the Act of Congress, is it not essential that *some other element* shall be disclosed? Would a charge to a jury that upon this assumed state of facts the defendants were conclusively guilty be sanctioned by the law, not to mention constitutional guaranties? Would Arthur v. Oakes, 63 Fed. Rep., 310, be condemned and overruled? Doubtless it would be said that a mere association was not *per se* criminal, and, with equal emphasis, that the act of the defendants in merely assuming an attitude indicating a refusal to permit their assailant to succeed, or an endeavor to crown their own efforts with success, did not prove a conspiracy. It is believed that the rules by which it is to be determined what superadded elements are essential to convert such an association (perhaps, a State corporation, or one organized under the Federal statute of July 29, 1886, 24 Stat. L., 86), into a criminal conspiracy, even under the Act of July 2, 1890, are most clearly collated and firmly established in and by what was said in various portions of the opinions in the McGregor case.

It is ventured to thus summarize the rules of law and the suggestions of a practical nature to which reference is had *supra:*

A ruling that the presence of a commercial interest is evidence of a malicious purpose "would be to convert into an illegal motive *the instinct of self-advancement and self-preservation*, which *is the very incentive of all trade.* * * To say that a man is to trade *freely*, but that he is to *stop short* at any act which is calculated to *harm other tradesmen* * * would be *a strange and impossible counsel of perfection*," and to undertake

to judicially determine what competition is unduly burdensome to one of the competitors "would impose *a novel fetter upon trade*," (BOWEN, L. J., 23 Q. B. D., at 615, 616, 618). "The success of one must be the failure of the other," (FRY, L. J., 23 Q. B. D., at 626), a doctrine which *necessarily follows* from the policy that competition shall be encouraged, (626, 629). If mere injury as a result of competition, or of steps taken by others for self-protection, or self-advancement, is to mark an actionable wrong, then "*all competition must be unlawful*," a view which Lord Chancellor HALSBURY emphatically characterized as "a sufficient *reductio ad absurdum* to dispose of that head of suggested unlawfulness," (1892, App. Cas., at 36, 37). The right of persons to associate for the purpose of protecting themselves is, in truth, sanctioned by the policy of *freedom of trade*, (Lord BRAMWELL, at 47; Lord MORRIS, at 50). "The object of every trader is to procure for himself as large a share of the trade he is engaged in as he can," (Lord HANNEN, at 58). So, the mere fact that a number agree to act in concert, however potent the influence they are thereby enabled to exert, and however great the harm which may be done to a competitor, involves no legal wrong. Where the motive is the advancement or protection of their own commercial interests, there is present the element of just cause or excuse, and consequently and necessarily a negation of the essential ingredient of mere personal malice, (Lord COLERIDGE, 21 Q. B. D., at 549, 552–554; BOWEN, L. J., 23 Q. B. D., at 613, 614, 615, 616, 617, 618; FRY, L. J., at 625; Lord Chancellor HALSBURY, 1892, App. Cas., at 40; Lord MORRIS, at 49; Lord FIELD, at 57; Lord HANNEN, at 59, 60). A different doctrine would logically transform every *partnership or mercantile corporation* into a criminal conspiracy, (BOWEN, L. J., 23 Q. B. D., at 617; Lord Chancellor HALSBURY, 1892, App. Cas., at 38). That third persons are put to a choice whether they will deal with one of the associates or with their competitors involves

no element of restraint of trade or of unlawful means, (Lord WATSON, 1892, App. Cas., at 43).

The cautionary ruling of Lord ESHER, already adverted to, that a case involving a *mere occupation* is to be judged by wholly different rules from those he there advocated,—that is to say, their right to agree to act in concert to secure conformity to an agreed schedule of wages or commissions, or to refuse to have business intercourse with those who do not belong to or who refuse to join the association, is indubitably clear, or, Lord ELDON put it, "*the case of trade is perfectly distinct*,"—is in 23 Q. B. D., at 609.

The prominence given in the opinion to the private rights of Greer, Mills & Co. and the fact that the order of injunction is almost exclusively devoted to placing that firm in the same position it would occupy if all its constituent partners were members of the Exchange in good standing, thereby annulling the suspension upheld in Greer v. Stoller, 77 Fed. Rep., make it proper to consider:

XI.

MATTERS CONCERNING WHICH THE ATTORNEY-GENERAL CAN SUE.

PRIVATE WRONGS AND CONTROVERSIES CANNOT BE CONSIDERED IN THIS CAUSE.

I. The pending bill presents no allegations of a malicious intention to injure Greer, Mills & Co., without just cause or excuse, in the way of a combination to "boycott," or otherwise on the part of the defendants, individually or collectively. Hence, any attempt to sustain the action by proof of such a wrong must be passed by as irrelevant to any issue within the jurisdiction of the Court.

"The accompanying affidavits cannot and do not enlarge the cause of action alleged." (1 Beach, Injunctions, p. 141, *n.*)

Conforming to "rules which have been established for ages on the soundest and clearest principles of general utility" (Mr. Chief Justice MARSHALL in Crockett v. Lee, 7 Wheat., 522, 527), these propositions have been announced as being axiomatic:

"The maxim that a decree must be sustained by the *allegations* of the parties, as well as by the *proofs*, is too well established to be disregarded."

Carneal v. Banks, 10 Wheat., 181, 189;
Pratt v. Vattier, 9 Pet., 405, 415;
Jackson v. Ashton, 11 Pet., 229, 249;
Knox v. Smith, 4 How., 298, 317.

"A party can no more succeed upon a case *proved* but *not alleged*, than upon a case alleged but not proved.

Foster v. Goddard, 1 Black, 506, 518.

"Averments without proofs and proofs without averments are alike unavailing."

Washington R. Co. v. Bradleys, 10 Wall., 299, 303.

"The decree of a court of equity upon oral allegations, without written pleadings, would be *an idle act*, of no force beyond that of an advisory proceeding of the chancellor."

Windsor v. McVeigh, 93 U. S., 274, 283.

And if such a tort on the part of *individual members* were alleged and proved, liability therefor could, self-evidently, not be charged against the organized body, nor against any member thereof not assenting thereto.

2. In any event, however, under the facts of this case, such a wrong would not be a public one which can be enjoined or punished by an equitable proceeding instituted, in form, by the United States: it would be a merely *private wrong* against the individuals who were the objects of the malice referred to. These individuals must appear as the plaintiffs of record.

The precise question was considered and directly

decided in a case presenting a most extreme state of facts.

Findlay v. McAllister, 113 U. S., 104, 110, 111.

It is, of course, not denied that the United States can sue in equity to assert *the general welfare of the whole people* in matters of interstate commerce covered by the Act of 1890. But so far as any *private right* of Greer, Mills & Co., is concerned, there is no such power, nor could it constitutionally be conferred.

If the matter wears a criminal aspect, the accused have a constitutional right to a trial by jury. The Attorney-General cannot be heard in such a proceeding unless it appear that a public interest, in the legal sense, is involved, a rule which has particular weight in the Federal jurisdiction. If it appears that the motive of the action is private malice or a desire for vengeance, or its object the protection of a private right, the suit must be dismissed. The element of private instigation is accorded particular weight in determining whether an interlocutory injunction should be issued.

These principles are well established and sustained by a wealth of authority:

a. Before the United States can sue it must be shown that they have a substantial interest in the premises, either pecuniary, or in the discharge of a duty to protect the welfare of the *general* public, (as distinguished from mere private interests on the part of individuals).

United States v. San Jacinto Tin Co., 125 U. S., 273, 285, 286, 308.

This question was most exhaustively considered in United States v. Debs, 64 Fed. Rep., 724, and *In re* Debs, 158 U. S., 564. It was admitted on all hands, and this Court distinctly ruled, although it was boldly avowed by the defendant that his precise purpose was to *maliciously injure* and to "boycott," not only the Pullman Company, but also a large number of railroad companies, (with whom the strikers had no other con-

troversy), for the sole reason that *they would not break valid existing contracts* with the Pullman Company,—"that it is not the province of the government to interfere in any mere matter of *private controversy between individuals*, or to use its great powers to enforce *the rights of one against another*," (158 U. S., at 586.) "The difference between a public nuisance and a private nuisance is that one affects *the people at large* and the other *simply the individual*." (592, 593.)

"It is not sufficient for the people to show that wrong has been done some one; *the wrong must be done to the people in order to support an action by the people for its redress.* The suit now before us seems to have been instituted on a different theory. It sets forth various acts as wrongful, which, if wrong, affect no public right. These wrongs are wrongs *to individual citizens*, and not to the State, and are remediable *at the suit of the parties injured only*."

People v. Albany etc. R. Co., 57 N. Y., 161, 167, 168, 171.

b. This rule is not changed by section four of the Act of July 2, 1890. Under established principles, and in view of the Constitution, nothing can be asserted by force of that section unless the same cause of action, (so far as this feature of the case is concerned), was remediable by a public action under the rules governing the jurisdiction of the Chancery Courts, at the time our Constitution was adopted.

United States v. Debs, 64 Fed. Rep., 745, 753.

In other words, while a conspiracy whose real purpose is to maliciously injure another without just cause or excuse, may constitutionally be declared to be a *crime* (United States v. Pettibone, 148 U. S., 197), yet in a prosecution therefor there is a guaranty of *trial by jury* which Congress cannot impair. (Boyd v. United States, 116 U.S., 616, 635; *In re* Debs, 158 U. S., at 594). The right of the United States to invoke the equity jurisdiction depends, *as a fundamental condition*

precedent, upon their having a sufficient interest in the controversy, and will fail whenever it appears that the wrong in question *is merely private*. (125 U. S., at 285, 286). To confer power upon the United States to redress such a private wrong by an equitable action is a denial of the right of trial by jury.

Neely v. Scott, 140 U. S., 106.

That the party injured may be engaged in interstate commerce, or in an occupation which concerns a commodity which is the subject of such commerce, does not change the wrong done him from a private to a public one, much less does it make it one which the Government can enjoin, for it has become established that the Act "gives no *new right* to bring a suit in equity," and that so far as *private injuries* are concerned, the exclusive remedy is by an action at law under Section 7.

Blindell v. Hagan, 54 Fed. Rep., 40, 41; affirmed, 56 Fed. Rep., 696;

Pidcock v. Harrington, 64 Fed. Rep., 821, 822;

Greer v. Stoller, 77 Fed. Rep., 1, 3.

c. Even where the right to sue exists, it is a decisive inquiry whether the granting of an injunction at the suit of the Attorney-General will *actually promote* the public interests. Unless such a result will clearly follow, the matter is left to be redressed at law or by criminal proceedings.

Morris etc. R. Co. v. Prudden, 20 N. J., Eq., 530, 536, 539.

Thus, although a floating grain elevator was so used as to constitute, strictly speaking, an obstruction to an important harbor, and, consequently, a technical public nuisance, an injunction sued for by the Attorney-General was denied in view of the fact that the instrumentality was largely used by shippers and therefore promotive and not restrictive of commerce. The wrong was "*more than balanced by the public benefits and the facilities rendered to commerce.*"

People v. Horton, 63 N. Y., 610, 617-618, 619-620;

Raritan Township v. Port Reading R. Co., 49 N. J. Eq., 11, 16.

"The injury to the public right must be of a *substantial* character and not a mere *theoretical wrong*."

Attorney-General v. Metropolitan R. Co., 125 Mass., 515, 516;

People v. Equity Gaslight Co., 141 N. Y., 232, 238;

1 High Injunctions, Sec. 765;

2 Beach, Injunctions, Sec. 1078.

d. There is, however, a further principle fatal to the right of the United States to be heard to litigate a controversy between Greer, Mills & Co. and the defending Exchange, or some one or more members thereof, and to restrain the commission of *merely private injuries.*

This principle has been well summarized by Judge DILLON: The public officer in question "must act in his official capacity, under a sense of official duty, and *not merely lend his name for the use of a private party. The proceeding must be official in fact and not in form only.* * * * *Public proceedings ought not to be used for the promotion of private ends.*"

2 Dill. Mun. Corp. (4th ed.), Sec. 899, n. 3.

No one can close his eyes to the fact that this proceeding is instigated and prosecuted by private interests. Indeed, the allegations of the bill and the name of the party verifying the same, of themselves, indicate as much, especially when considered in connection with Greer v. Stoller, 77 Fed. Rep., 1. And when it is noted that there are so many Exchanges throughout the land against which all the objections outlined in the pending bill are fully applicable, many of which, in influence upon commerce, volume of business done, number of members, drastic nature of rules, and other similar respects, completely overshadow the organization at bar,

and that none of them are assailed, though their incorporated character would enable the question to be tested expeditiously and at comparatively small expense, the inference becomes conclusive. The unofficial character of counsel who appeared at the hearing below, and who prepared the briefs for the government; and the proof which was made, not only puts this beyond question, but serves to bring the case fully within the characterization of a learned court:

"It appears to be instituted for that which we know is very often a stronger inducement for proceeding in this court than any pecuniary interest could afford, namely *to wreak out feelings of personal vengeance and anger.* That is the object of this suit, and the question is whether I am to permit the records of this court to be burdened with a suit which has no other object in the main than that. * * * I confess I cannot conceive anything *more improper than that.* * * * This suit is not a *bona fide* one, faithfully, truthfully and sincerely directed to the interests of the shareholders (public) whom the plaintiff claims the right to represent, and is *a mere mockery and an illusory proceeding* and must be treated as *an imposition on the court.*"

Robson v. Dodds, L. R., 8 Eq., 301, 307, 308;
Tuttle v. Church, 53 Fed. Rep., 422, 429.

This doctrine is fully applicable to actions prosecuted in the name of the law-officer of the public.

Thus, where the Attorney-General of England sought to enjoin a gas company from committing a public nuisance, and the court found that he had been induced to file the bill at the instigation of *a rival gas company*, Lord Justice KNIGHT BRUCE said: "Where the public interest purports to be asserted, it is not wholly immaterial, at least upon an interlocutory application, to look into the motives from which, or under which, the matter is brought forward. Now, in the present case, *though the Attorney-General's name is*

used, it is impossible not to see that the suit has been instituted *more for regard to private than to public good.*" (311, 312.) And Lord CRANWORTH added, at p. 313: "The case divides itself into two branches, in form. In substance, however, I cannot but come to the conclusion, that the Attorney-General and the public here are *a mere fiction* and that *the real parties concerned are only those that were parties in the former suit*," (which in the present case is Greer v. Stoller, 77 Fed. Rep., 1).

Attorney-General v. Sheffield Gas Co., 3 DeG., M. & G., 304.

This case was afterwards fully affirmed.

Attorney-General v. Cambridge Gas Co., L. R., 4 Ch. App., 71, 83, 84.

In United States v. San Jacinto Tin Co., 125 U. S., 273, 286, Mr. Justice MILLER declared that, although the bill had been officially brought by the Attorney-General and bore his signature, "if the fact becomes manifest that the suit *has actually been brought for the benefit of some third person*, * * * the suit must fail."

Considerations of this character are entitled to especial force where, as here, the parties seeking to wreak their malice, to vindicate their rights, or to be protected against wrong-doing, as the case may be, are at full liberty to sue in their own names. They are citizens of Illinois, so that they can sue in the Federal courts of Kansas and Missouri, as well as in the State courts. Indeed, it appears from the record that they now have such a suit pending in Wyandotte county, Kansas, and that they have previously sued in the District court of that county, in the State Circuit court at Kansas City, Missouri, and in the Federal court for the Western District of Missouri. If they constitute an agency of interstate commerce, as the bill claims, they can sue in the Federal court without regard to citizenship, (Toledo etc. Ry. Co. v. Pennsylvania Co., 54 Fed. Rep., 730),—

of course, assuming responsibility for costs, and, if a temporary injunction should be awarded, liability for damages if ultimately unsuccessful.

Consequently, the element of private wrong—of a cause of action for maliciously injuring another without a just cause or excuse—is not within the allegations of the present bill nor subject to be made the basis of any relief in a suit instituted by the Attorney-General, even if proved.

Findlay v. McAllister, 113 U. S., 104, 110, 111.

XII.

Rules Governing the Granting of a Temporary Injunction.

This cause was heard on an application for a temporary injunction, based on the bill, answer, replication, and volumnious affidavits, *pro* and *con*.

In considering these affidavits, the mass of incompetent matter with which those filed by the complainants' so plenteously abound—hearsay, conclusions, and statements which have no basis in the pleadings—must of course be disregarded. Such statements are not made competent because embodied in *affidavits*. Self-evidently, "the same rule must be applied to distinguish between testimony that is admissible and testimony that is non-evidential, whether such testimony is found in affidavits to be used as a ground for obtaining an injunction or is produced in open court by the examination of witnesses to support a litigated fact."

Thompson v. Ocean City R. Co., 37 Atl. Rep., 129, 130, (N. J. Eq., 1897);

Bennett v. Congdon, 50 Pac. Rep., 556, (Mont., 1897).

It will be observed that the injunction under review was not designed to preserve the *status quo*, but that it is *mandatory in form* and if permitted to take

effect, by an affirmance here, it will operate to destroy the defending Exchange and in all other respects subject it to the disastrous consequences of an ultimate adverse *final decree*.

The circumstances are such that if any doubt is entertained as to the literal truth of the defendants' showing of facts, that doubt must be liberally solved in their favor.

1 Beach, Injunctions, Sec. 137.

Unless this course is pursued, irreparable injury may be done the defendants. So, too, if they are to be denied, the privilege of sifting the facts outlined in the complainants' *ex parte* affidavits by cross-examination and of meeting the rebuttal affidavits (which were disclosed for the first time at the hearing), before the *status quo* is interfered with, the result will be to characterize the action of the circuit court in awarding an interlocutory order, under the circumstances of this case, as not only an abuse of judicial discretion, but as contrary to established landmarks of the law.

United States v. World's Columbian Exposition, 56 Fed. Rep., 654;

Hagen v. Beth, 50 Pac. Rep., 425, (Cali., 1897).

The principles which should have been followed below, and in the light of which we believe that this Court, in fairness to the defendants, will draw its deductions as to the facts of this case, are these:

1. The rules and course of business of the defendants are not of recent origin. They have prevailed in substantially the same form for over ten years. A vast business has been built up as a result thereof, and all interests have adjusted themselves to the methods and usages thereby prescribed. Memberships worth $750,000 are involved. A temporary injunction will not only destroy the value of these certificates, but will do so in such a manner that it can never be recovered. That is to say, a preliminary injunction will necessarily dissolve the organization beyond the power of reorgani-

zation. In the meantime, the competing Exchanges at Chicago, St. Louis, Omaha, Fort Worth and other points will have attracted the business, and the much vaunted Kansas City market will be a thing of the past. And if, for any reason, it should be hereafter held that the defendants were not engaged in interstate commerce, or that the rules of the Exchange were not condemned by the Act of 1890, the defendants will be wholly remediless. The United States having given no bond, no damages can be recovered. The amount of public and private mischief caused by the preliminary injunction will be incalculable, and, unfortunately, the private loss will fall most heavily on men of exceedingly limited means. These rules were laid down in a case decided under the statute in question.

U. S. v. Jellico etc. Coal Co., 43 Fed. Rep., 898.

2. It is fundamental in equity jurisprudence that a temporary injunction is not a matter of right. The court never exercises its discretion unless certain elements concur. It is not enough that the court may believe that on final hearing the complainant will probably recover; nor, indeed, that it believes that *the whole case can as well be decided on the preliminary hearing.*

Akin v. Davis, 14 Kas., 143, 147;

Gold etc. Tel. Co. v. Commercial Tel. Co., 22 Fed. Rep., 838;

Gray v. Manhattan Ry. Co., 128 N. Y., 499, 509.

Where the complainant makes a *prima facie* case, so as to speak, on the law and the facts, the court oftentimes grants a preliminary injunction; but this jurisdiction is limited to instances where "the case is one of *urgent necessity* and when *irreparable injury* is threatened."

City of Newton v. Levis, 79 Fed. Rep., 715, 718, (C. C. A.);

West Jersey R. Co., v. Cape May etc. R. Co., 34 N. J. Eq., 164, 166;

Stoddart v. Vanlandingham, 14 Kas., 18, 36;

Zinsser v. Cooledge, 17 Fed. Rep., 538;
Kilburn v. Ingersoll, 67 Fed. Rep., 46, 49.

"In balancing the comparative convenience or inconvenience from granting or withholding an injunction, the Court will take into consideration what means it has of putting the party who may be ultimately successful *in the position he would have stood if his legal rights had not been interfered with.*"

Russell v. Farley, 105 U. S., 433, 438, 439.

"Otherwise, a defendant might be *unnecessarily and improperly restrained from doing that which he has a right to do* and through such restraint suffer an injury for which *no adequate compensation is afforded.*"

Conley v. Fleming, 14 Kas., 381, 385;
Rigby v. Great Western Ry. Co., 2 Phill. Ch., 44, 50;
Shrewsbury etc. R. Co. v. Shrewsbury etc. R. Co., 1 Sim., N. S., 410, 432;
Dyke v. Taylor, 3 DeG., F. & J., 467, 472, 473;
Fieldman v. Lancashire etc. Ry. Co., 2 DeG. & Sm., 531, 536, 537.

3. These considerations are especially weighty where the proposed temporary injunction is *mandatory* in form and will practically operate as a *final decree.* Even if cases may arise in which the exigency is so clamorous as to justify the issuance of such an order, a court will always be exceedingly careful to avoid "the possibility or likelihood of the awkward predicament of having silenced" a business which may ultimately be adjudged to be perfectly lawful.

Elwes v. Payne, 12 Ch. Div., 468, 477;
Hilton v. Earl of Granville, 1 Cr. & Ph., 283, 297, 298;
Attorney-General v. Mayor of Liverpool, 1 Myl. & Cr., 171, 205, 212;
Greenhalgh v. Manchester etc. Ry. Co., 3 Myl. & Cr., 798, 799.

4. For the purpose of applying these rules to the present case, it is to be remembered:

a. All the reported cases concerning Commercial Exchanges strongly adjudge their merit as promoters of trade and the lawfulness of their rules. No one has hitherto supposed that Congress in 1890 had transformed them into unlawful organizations. The question is not only new, as was conceded by the circuit court, but the defendants' view of it, if not palpably unanswerable, is, at least, supported by weighty argument and by authorities of so much force and respectability that ordinarily they would be unhesitatingly adopted. Certainly, the question is one "of much practical importance in the present state of legislation on the subject," a consideration of decisive influence in determining the exercise of discretion in such a case as this.

Smith v. Reading City Pass. Ry. Co., 156 Pa. St., 5, 8.

b. Not only is the construction of the statute insisted on by the complainant of doubtful correctness, but jurisdiction of the court—the applicability of the statute,—depends upon a question largely of fact: Does the occupation of the defendants consist of (1), *interstate* transactions, and (2), if so, is that occupation "commerce" in the sense of the Constitution? In such a case, a temporary injunction should be refused, even though the Attorney-General be the applicant therefor.

Attorney-General v. North Jersey St. Ry. Co., 54 N. J. Eq., 263.

5. The operations of the Exchange have done and are doing no harm to the public. The right asserted by the complainant is, at best, a mere technical one. The commissions prescribed are proved to be reasonable, and they are the same as those which prevail elsewhere. To destroy this Exchange, leaving all others in existence, will simply increase the shipments to competing markets. If the others, in turn, are likewise to be sub-

jected to dissolution by a temporary injunction (or indeed on a final hearing), it will cause interminable confusion and commercial chaos, and bring about the very condition of *suave qui peut* which has been recognized, in all countries and in all ages, as fatal to the prosperity of a trade. Weighing the balance of comparative convenience and injury, the preponderance is greatly on the side of the defendants.

So it was concluded where the operation of a branch railroad was sought to be enjoined (Torrey v. Camden etc. R. Co., 18 N. J. Eq., 293, 297); and, also, where the injunction "may operate to injuriously interrupt an important enterprise" (Wing v. Fairhaven, 8 Cush, 363), or to "compel the defendant to abandon a fundamental principle upon which it now conducts its business" (Seymour v. Mutual Reserve Life Asso., 14 Misc. N. Y. Rep., 151, 155), or to prevent a street railway company from changing its motive power to electricity. (Fritz v. Erie City Ry. Co., 155 Pa. St., 472, 473; Myers v. Duluth Ry. Co., 53 Minn., 335, 337). See, also,

Swift v. Jenks, 19 Fed. Rep., 641, 643;

Tuttle v. Church, 53 Fed. Rep., 422, 428;

U. S. v. La Compagnie Francaise, 77 Fed. Rep., 495.

6. Even when the Courts do not peremptorily strike from the docket a case in which the use of the name of the public appears to be merely illusory and at the instigation of a private interest, the element is regarded *as fatal to an application for an interlocutory injunction. On this hearing the motives* which induced the litigation are of decisive influence.

Atty.-General v. Sheffield Gas Co., 3 DeG., M. & G., 304, 311, 313;

Atty.-General v. Cambridge Gas Co., L. R., 4 Ch. App., 71, 83-84.

"A court of equity does not look with favor upon a suit brought merely for the purposes and at the instigation of another."

Tuttle v. Church, 53 Fed. Rep., 422, 429.

7. When it had been determined to dispose of the case, in the same manner as if it had stood on final hearing, any dispute in the facts should have been determined in favor of the defendants, not only in fairness and to avoid the possibility of an irreparable injury to them by an interlocutory injunction based on a state of facts which may turn out to be wholly or substantially untrue, when the testimony is taken in the regular way and considered on final hearing, but also because the showing of the defendants accords with the facts as conceded or as found in the many investigations which have been made into the aims, purposes, operations, and rules of Exchanges generally.

Connell Mfg. Co. v. Wattles, 49 N. J. Eq., 92, 97.

8. However, it is confidently submitted that a dispassionate consideration of this Record will induce the conclusion that the complainant is wholly without a cause of action.

The appellants, therefore, invoking the now established rule of practice in such cases, pray that the order appealed from may be reversed, and the bill dismissed.

Smith v. Vulcan Iron Works, 165 U. S., 418.

Respectfully submitted,

L. C. KRAUTHOFF,

Of Counsel for Appellants.

Kansas City, Mo., January 15, 1898.

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OCTOBER TERM, 1897.

No. 533.

KANSAS CITY LIVE STOCK EXCHANGE, SUB NOM. HENRY HOPKINS ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

REPLY BRIEF BY APPELLANTS.

L. C. KRAUTHOFF,
Of Counsel for Appellants.

KANSAS CITY, MO., *February* 15, 1898.

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REPLY BRIEF BY APPELLANTS.

The briefs which have already been filed are so voluminous that ordinarily a reply would hardly be justified. The assurance of the private counsel for Greer, Mills & Company, who are the authors of the presentation on behalf of the Government, that that brief was intended to be free from feeling or other fault was undoubtedly penned in good faith. Unfortunately, their zeal for the private interest which promotes and dominates this litigation made it impossible for them to live up to the standard set. It has been so often enjoined, and with particular emphasis by this court, that the course here pursued should not be tolerated. The evil of permitting the conception which Lord Brougham had of

his duty as counsel for a party charged with crime to control counsel for the prosecution is a serious one. It generally results in suppressing a fair presentation of the case and in putting the accused in danger that the court may attach a weight to facts stated by the nominal mouthpiece of the Government which it would not do if his real clientage were known, and when the regular law officer would, as he should, shrink from becoming a partisan of mere private interests and grievances.

As the usual result is present in this case also, it becomes our duty to correct such of the errors as can be noticed in the limited time at hand. If exchanges are to fall and their members to be stamped as criminals, it should be done fairly and with a solemnity befitting what will prove to be the most momentous and disastrous event in the commercial history of the United States!

THE STATEMENT.

1. The fact that the managers of packing-houses are members of the exchange is much dilated on, and some suspicion is sought to be aroused by reason of this alleged "union of sellers and buyers" in the same association. The uncontradicted explanation is detailed in the answer (Rec., p. 165) as follows:

"Most of said members are engaged in selling and sometimes in purchasing live stock for a commission and acting for others. There are also a number of members who are engaged in managing and operating packing-houses and other enterprises and deeply concerned in building up and maintaining the high standing of Kansas City as a point to which live stock may be shipped for sale or at which live stock may be bought under rules and regulations insuring honesty and fidelity and under uniform and reasonable rules and at uniform and reasonable rates of commission, and that such facilities shall be maintained for conducting the sale and purchase of live stock that persons desiring to sell or buy

the same will find it to their interest to do so. Accordingly, the persons last described and others interested are also members of such exchange, and each and every member thereof voluntarily either joined in originally establishing the same or has since become a member thereof, and that at no time has said exchange refused to admit as such member any reputable person who was willing to comply with the conditions of membership and to abide by the rules of said organization."

And again in the affidavits:

"The affiants say that the persons engaged in operating packing-houses at said Kansas City recognize, as do the persons engaged in commercial pursuits in all the large cities of the world, that the establishment and maintenance of an exchange is not only an absolute necessity to the transaction of business, but a decided advantage to the public. By means of the rules of said exchange honorable conduct is inculcated and required to be observed in all transactions, bad faith, extortion, and failure to keep business obligations are punished, and methods and facilities are provided by which the business is done expeditiously, fairly, honorably, and in the interests of all concerned. More violations of rules in respect of these matters have been made the occasion of discipline by the Kansas City Live Stock Exchange, and generally by commercial exchanges throughout the United States, than for other causes." (Rec., p. 179.)

2. It is also said that no one can buy or sell live stock at the yards in question without employing one of the defendants. The situation in respect to this phase of the matter, even if the circumstance can be deemed to be material, is fully explained on pages 166, 178, 179 of the Record.

3. That Greer, Mills & Company were members in good standing on November 16, 1896, is contradicted by the date given at the head of the reported opinion in Greer *vs.* Stoller, 77 Fed. Rep., 1, namely, November 6, 1896, by the fact that the mere restraining order in that case, granted improvidently and without jurisdiction, did not annul the suspen-

sion which had been previously pronounced, and by the express reservation of their status as suspended members which is contained in the resolution in reference to their withdrawal from membership. (Rec., p. 186.)

4. The attitude of the defendants in respect of Greer, Mills & Company is accurately defined in an affidavit (the matter being presented in that form because *the silence of the bill* on the subject made it improper to refer to it *by way of answer*):

"The only point of controversy is whether said Greer, Mills & Company, as suspended members of said exchange, are entitled to compel members of said exchange to deal with them in reference to live stock which the said Greer, Mills & Company are offering for sale as commission merchants and as competitors to the members of said exchange who are engaged in the same occupation, or to compel those members of said live stock exchange who, although not engaged in the commission business, are interested in the maintenance of the benefits and advantages of the exchange to purchase live stock from the said Greer, Mills & Company, which they offer as commission merchants. If the said Greer, Mills & Company desire to act as commission merchants in violation of the rules of said exchange and in competition of the members of said body, there is nothing to prevent non-members from dealing with them if they so desire, nor to prevent any member of said exchange from dealing with them if such member prefers to sever his membership in said exchange." (Rec., p. 178.)

5. The statement is repeatedly made (and the whole argument on an important part of the case is bottomed on the assertion) that "the commissions (now being) charged are substantially double those charged prior to the organization of the exchange." A series of apparent quotations from the rebuttal affidavits are relied on as proof. It is to be noticed that the sentences most strenuously urged consist of conclusions in the way of expressions of *belief* and *opinion*.

These further facts are omitted: Mr. Wilson, who acted as manager of several great cattle companies, said: "During these years (1881–'6) the *ordinary commission* charged was fifty cents a head for cattle," a deduction, when made, being in the way of "rebates," principally granted by solicitors (Rec., p. 229). Messrs. Goode, Boggs, and Whiting, whose affidavits are stereotype duplicates, concur in saying that this favoritism "depended a great deal upon *the volume of business*" done by the shipper (Rec., pp. 250, 251, 252); and Mr. Greer explained that while the *regular rates* were stated on the accounts rendered, yet a *secret account* of the rebates was kept separately and remitted for monthly. (Rec., pp. 236, 237.)

The affidavits of the very reputable and experienced gentlemen filed by the defendants (Rec., p. 182) show not only that the practice was far from universal, and that, so far as it was indulged in, it was with so much surreptition that they did not know of it, but that in point of fact the operations of the exchange had, on the whole, resulted in a substantial *reduction* of the commission charges, and that, too, for better service and increased facilities.

6. The confessedly irrelevant account given of the proceedings which resulted in the conviction of Greer, Mills & Company would not have appeared if this had not been a private action, but in charge of the law office of the public. The record shows that firm to have been properly convicted. No issue was made as to this, even in Greer *vs.* Payne, 46 Pac. Rep., 190, and Greer *vs.* Stoller, 77 Fed. Rep., 1. That the explanation volunteered in this court is a favorite one of these parties can readily be gathered from the proceeding before Judge Tuley, referred to on pages 214 *x*, *y* of our principal brief.

7. It is also said that it appeared before the circuit court that the rebuttal affidavits had been submitted to one of the

counsel for the defendants, etc. The word "constructively" ought to have been inserted; they were left at his office during his absence and called for before his return. It is conceded that the discretion exercised by the circuit court in this respect cannot be assigned as error; but the appellants are entitled to the benefit of the actual facts, to the end that they may not be charged with having failed to make a further showing, even if it had been permitted by way of surrebuttal, so to speak. The practice here pursued points the danger of passing on such matters on *ex parte* affidavits, and demonstrates the justice of the contention that the grant of such an injunction order—which operates as a final decree, annihilates the *status quo*, and is mandatory in form—is improvident and erroneous.

THE BRIEF.

A careful comparison of the positions urged by the parties respectively will serve to bring the points of controversy in bold relief.

1. That the rule on the subject of prepaid telegrams is *conceded* to be unlawful is a wholly unwarrantable assumption. The principal evil which gave rise to the rule is this: Some of the commission merchants inaugurated the practice of wiring indiscriminately to shippers on days when the market was favorable, urging an immediate consignment. As it could not be known how many would comply, practically all persons having cattle on hand would be wired to. When a deluge of these telegrams was thus sent out, a shipper often receiving a large number on the same day, the inevitable result was many times a glutted market and a corresponding break in prices. The effect on the standing of the market was disastrous, confidence was lost, and shippers who had thus been lured to a loss visited the blame on the exchange which tolerated such a course of conduct, on

the innocent as well as on the guilty. The consequence was the regulation in question, which has proved entirely satisfactory to all reasonable-minded shippers. Telegrams might be sent, whether requested or not, reporting actual sales on behalf of the addressee and to purchasers *ad libitum*, and if a given shipper desired further information he could wire for it or arrange in advance to have it sent to him.

The suggestion that the embodiment of this very reasonable arrangement was a restraint on interstate commerce because a telegraph company is engaged therein is novel. It proceeds, as does substantially all of the brief on the subjects of interstate commerce and the proper construction of the act of July 2, 1890, and of the opinion of this court in the trans-Missouri case, on the assumption that every arrangement which *operates on commerce* among the States in any way whatever is a violation of the statute.

The errors which pervade the presentation are these:

a. States can *neither regulate nor restrain* interstate trade or commerce. Private contracts may *regulate* it in an infinite variety of ways, but must not unlawfully restrain it.

b. A regulation for the orderly conduct of trade is a benefit thereto and does not constitute a *restraint* thereof in any sense whatever.

c. The act of July 2, 1890, does not mean that hereafter any and every private contract affecting or operating upon interstate commerce or the manner of conducting it is for that reason criminal.

d. Association is not of itself unlawful. Each case must depend upon its own peculiar facts and involves the inquiry of a restraint imposed—*i. e.*, injury done or necessarily resulting to the public.

2. The various subdivisions of the rule concerning solicitors are manifestly intended to prevent evasions, and if there is a right to make the rule, self-evidently, evasions thereof may be guarded against. That the rule was dictated by the experience of so many persons, each vitally interested in maintaining the market (but antagonists in other respects), and the universality of concurrence in the propriety thereof make it impossible to conceive that the public is injured as a result. Unconsciously, no doubt, but very properly, counsel repeatedly concede that this and other rules are merely *regulative*.

The importance sought to be attached to what was said in the recent case of People vs. Chicago Live Stock Exchange, 48 N. E. Rep., 1062, warrants these suggestions:

a. A review of the rules of that body manifestly convinced the State's attorney and the very learned counsel who were associated with him that the *only one* which was open to even inquiry was that concerning solicitors.

b. In other respects the people of the State of Illinois in substance admitted of record that the organization and its rules were not only free from illegality, but that their maintenance and enforcement were beneficial to the public interests.

c. The court declared that the purpose of the exchange "is undoubtedly, if carried out to the fullest extent, in the interest of the public," and yet, as will be hereafter shown (*k*), the decision announced, if logically applied, would prove to be a most formidable obstacle to the consummation thus indicated.

In dealing with matters of public concern it should be constantly borne in mind that "government is *a practical thing*, and it is always well to see that in *preventing one evil*

a greater evil than that sought to be guarded against *has not been created.*

People *vs.* Board of Canvassers, 82 N. Y. State Rep., 866; 48 N. Y. Supp., 866, 868.

d. The provision before that court was *a by-law of a corporation,* which apparently had been adopted by the majority of the members over the protest of what the information described as "a large minority," and the point in judgment was that it was beyond the power of *the corporate body* to enact the same. The Kansas City Exchange is *a voluntary association,* and its rules evidence *the unanimous contractual obligations of its members.*

There is a broad distinction between a by-law of a *corporation* and a rule or other provision embodied in the contract between the members of a *voluntary association.* The former are subject to the test of *reasonableness,* while the latter are valid, *however unreasonable they may be.* Corporations make by-laws by virtue of a granted power, while individuals in agreeing to such rules exercise an inherent right to contract. The right to suspend from membership in a corporation involves and depends upon entirely different considerations from those which fix the result of a failure to observe contractual rules. Such non-observance is a *breach of contract,* and operates, *ipso facto,* as a withdrawal from and a surrender of a membership granted by contract in the first instance, and the continued existence of which is conditional upon an unbroken compliance with the member's obligations under that contract.

1 Thomps., Corp., § 845, and note, p. 676.
1 Beach, Private Corp., §§ 319, 83, 84, 309.
Boone, Corp., § 335.
Bacon, Benefit Societies, § 89.
Niblack, Benefit Societies, 2 ed., § 73.
Austin *vs.* Searing, 69 Am. Dec., note, 672–677.

Hiss *vs.* Bartlett, 63 Am. Dec., 776.
Otto *vs.* Tailors' Union, 7 Am. St. Rep., note, 163.
Hyde *vs.* Woods, 2 Sawy., 655, 659; S. C., 94 U. S., 523, 525, 526.
Lewis *vs.* Wilson, 121 N. Y., 284.
Comm. *vs.* Union League, 135 Pa. St., 301, 327.
Supreme Lodge *vs.* Kalinsky, 57 Fed. Rep., 348, 351.
Supreme Lodge *vs.* Wilson, 66 Fed. Rep., 785.
Greer *vs.* Stoller, 77 Fed. Rep., 1, 8.
Borgraefe *vs.* Knights of Honor, 22 Mo. App., 127, 142.
Hammerstein *vs.* Parsons, 38 Mo. App., 332, 336.
Warren *vs.* Merchants' Exchange, 52 Mo. App., 157, 167.

Many matters may very well be the subject of a valid contract which would not be good as a by-law.

Adley *vs.* Whitestable, 17 Ves., 315, 323.
Dawkins *vs.* Antrobus, L. R., 17 Ch. Div., 615, 628-31, 634.
Elsas *vs.* Alford, 1 City Ct. Rep. (N. Y.), 123.

e. The greater part of the opinion under review consists of mere *dicta*. The declaration that liberty of *contract is a constitutional right* is manifestly correct, but, as applied to the case here at bar, it would prove not that parties are *licensed to break contracts* into which they have entered at pleasure, and to nevertheless enjoy *all the benefits thereof*, but that any attempt to enforce a breach of contract or to abridge the right of contract, whether by legislation or judicial declaration, would be violative of the very constitutional guaranties referred to.

f. The theory of a *constructive* injury to the public has never been properly applied to a mere private occupation, and finds no recognition in the act of Congress under consideration, as shown in our principal brief (pp. 211 *et seq.*).

g. The better considered cases and the manifestly correct principle of the thing are wholly at variance with the *dicta* announced.

More *vs.* Bennett, 140 Ill., 69, has been repeatedly and clearly shown to be erroneous (see cases in Principal Brief, pp. 240, 249), and proceeds upon a grievous failure to recognize the distinction declared in Morris Run Coal Co. *vs.* Barclay Coal Co., 68 Pa. St., at 188, and enforced in many well-considered cases. Curiously enough, the Pennsylvania case is relied on in the recent deliverance, and the distinction therein declared again overlooked.

h. The English cases of the Ipswich Tailors, 11 Coke, 53, and Rex *vs.* Cooper's Company, 7 T. R., 543, each involved the validity of a by-law of a corporation which sought to prevent persons from exercising a trade who had complied with all the requirements of the statute on the subject and who were strangers to the association. (Cuddon *vs.* Eastwick, Salk., 193.)

When the Ipswich tailors' case was cited to Lord Mansfield he declared that "in that case the by-law was against law; *it was against the 5th of Eliz.*, and a farther restraint than the act had made," and proceeded: "but this by-law is not against any law; it is *not a restraint upon trade*, but seems a *reasonable regulation*."

Green *vs.* Durham, 1 Burr., 127, 131.

Shortly after the same great judge, when the Ipswich Tailors' case was referred to as authority for condemning a regulation of the qualifications of apprentices to surgeons (a matter not covered by Stat. 5 Eliz.), said that "*it was too plain to argue*" and upheld the provision.

Rex *vs.* Company of Surgeons, 2 Burr., 892, 897.

The Illinois court also cited Society of Gunmakers *vs.* Fell Willes, 384, in support of its conclusions, but wholly over-

looked that there the court was careful to draw the important distinction (noted on pp. 99–101 of the brief) between *regulations* for conducting trade and *restraints* of trade, saying that "*it is for the advantage and not to the detriment of trade that proper regulations should be made in it.*" (388, 389.)

So Lord Loughborough declared (1790) that "it is *an object of public policy* that the exercise of certain trades should be under the *regulation* of particular bodies."

Butchers' Company *vs.* Morey, 1 H. Bl., 370, 374.

i. People *vs.* Fischer, 14 Wend., 9., has long since been recognized as going too far (2 Whart. Crim. Law, 9 ed., § 1366, p. 215, note) and as being so plainly erroneous that it is strange that any doubt should ever have been entertained on the subject. (Principal Brief, pp. 240, 249.)

Houston *vs.* Reutlinger is in effect diametrically opposed to Mr. Justice McKenna's conclusions in Continental Insurance Co. *vs.* Board of Underwriters, 67 Fed. Rep., 310, and even the Kentucky court has very recently expressed "serious doubts," at least, whether its former deliverance can justly have application to the rules of an exchange.

Globe Tobacco Warehouse Co. *vs.* Leach, 43 S. W. Rep., 423, 424.

j. The reasons for the rule in question stated in the answer in that case (48 N. E. Rep., at 1064) amply demonstrate that trade and the public interests would be better served by such a regulative measure than by permitting or reinstating the evils sought to be remedied thereby. The orderly conduct of trade is the most essential condition to its prosperity.

k. The solicitor's rule rests upon this additional basis: As is the case in business generally, the occupation of live-stock commission merchants is carried on in some instances by corporations or partnerships which are possessed of large

capital, but the great majority of such merchants are men of limited means only. If it be true that the employment of solicitors operates to increase the volume of business done by the employer, it follows that if those whose financial advantages enable them to do so may employ an unlimited number of solicitors they will draw unto themselves *practically all* of the business. Thus the few wealthy concerns would have it in their power to soon crush out their humbler and less fortunate competitors. The latter will either be without the requisite capital to maintain the army of solicitors from which consignments are expected or in their efforts to do so they will incur an expenditure so large as to speedily and inevitably cause their insolvency and resulting retirement from business. Such a rule operates to make it possible for *many* to follow this occupation. The absence of it would enable *the few* to aggrandize themselves and to confine the occupation to their own hands. In truth, this and similar rules are *spurs to competition* and enable it to be maintained. As already indicated, "competition to be *effectual* must be *constant*, not fitful" (Brief, p. 214, *k*). It is not perceived how trade can be benefited or the public welfare promoted by *driving out* 80 per cent. of the persons engaged in a given occupation, thus leaving the comparatively small remainder to hold the field, and that, too, by force of the power conferred by their superior financial equipment.

In view of the fact that the reason usually given for rulings which are supposed to effectuate a result believed at the time to be diametrically the opposite of this is the duty of the courts to check "the grasping tendencies of wealth" and to protect the weak against "the overpowering force of the strong," it is strikingly extraordinary that the *same argument* should be advanced in support of a conclusion which arms the prescribed "class" with a weapon infinitely more potent than any they could possibly forge without the aid of affirmative judicial sanction.

In the trans-Missouri case this court declared that trade

or commerce may "be badly and unfortunately restrained *by driving out of business the small dealers and worthy men* whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings," and, in language deeply tinged with pathetic mournfulness, deplored a condition by which a favored few would be enabled to inflict a great misfortune upon the country "by depriving it of the services of a large number of small but independent dealers who were familiar with the business and who had spent their lives in it, and who supported themselves and their families from the small profits realized therein." It was emphasized that "it is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent, * * * having no voice in shaping the business policy (of his employer) and bound to obey orders issued by others." (166 U. S., at 323, 324.)

And if the recent Illinois case does not logically produce a state of affairs at the Chicago stock yards which will justify such a lamentation, it will not be because the decision does not invite and sanction it. The great commission firms at that market are thereby told that they may lawfully exercise their "motives of an individual or corporate aggrandizement" to an unlimited extent under the protection of constitutional guarantees, be the consequences to the "small but independent dealers" what they may, and although the ultimate effect upon the market in question may be to put it in the control of "the corroding hand of wealth." It is to their credit that they, in all probability, will not exercise the powers thus given them to crush out their many smaller competitors and to transform them into "mere servants or agents;" and it is equally sure that if they did undertake to formulate the *logic of the decision into actual practice* the supreme court of Illinois would speedily align its rulings to the great preponderance of authority

on the subject and declare that the great powers of government should be sternly exercised to the confusion of what it would *then* denounce as an "astute and avaricious combination of monopolists." An answer that, pursuant to the former judicial declaration, their erstwhile competitors were *now* employed as solicitors, salesmen, or clerks would be characterized as proof conclusive that public policy had been offended. A suggestion in support of the answer that the course pursued had been enjoined by the court itself, or that judicial consistency ought to be observed in the premises, would doubtless be treated as fraught with an implication of insult. An appeal to be relieved from the point of danger "between the devil and the deep sea," into which the court had placed the defendants, would in all probably fall on deaf ears.

The exchanges have been called upon to choose between these alternatives on this subject.

a. If solicitors are to accomplish the purpose of their employment, the firm enlisting the largest army of them will in consequence reap a proportionate percentage of the business. As the business of one increases, that of his competitor must necessarily decrease. As a result, in course of time a few will succeed in soliciting to themselves practically all of the business. Their competitors must either respond with a like army—thus increasing the necessary expenses of the occupation to such a point that a corresponding change in the rates of commission must be made to meet the deficit—or find themselves bankrupt as the result of an expense account in excess of income earned.

b. To regulate the number of solicitors so as to be fair to all, and thus to subserve the public interest and the reasonable necessities of the business. Those desiring to employ such agents may do so to the full extent that a fair regard for the maintenance of the market and the existence of their

smaller competitors as independent dealers will permit. Thereby the latter are neither overwhelmed by a force which their limited means do not enable them to successfully contend against, nor driven to financial ruin as the result of a despairing effort to uphold their individuality.

As in the case of many other complex problems to which modern commerce has given rise, the Kansas City Exchange has evolved a solution in the premises which is so manifestly just to all concerned that its rule on the subject has the unanimous support of its members. That fact of itself is proof conclusive that trade is not injuriously affected. (Brief, pp. 113, 114.)

"That it must be convenient is shown by the fact that it has been established and followed." (Moult *vs.* Halliday, L. R., 1898; 1 Q. B., 125, 130.)

In the absence of a showing of injury to the public, the right of the exchange to regulate and of its members to contract with each other in respect of the matter ought not, and cannot consistently with the recognition of constitutional guaranties, be interfered with.

Indeed, it has been and is being urged by many that it would be in the interest of trade to provide by law that *no solicitors whatever* should be employed, and the state of facts portrayed in 48 N. E. Rep., at 1064, is relied on to warrant the contention. Suppose that an exchange should by unanimous vote, evidenced by a contractual rule voluntarily assented to, adopt such a provision, would it be condemned? Is it not manifestly true, as said by Judge Wheeler of a somewhat similar rule, that "dispensing with soliciting agents or the control of them cannot be illegal, nor an agreement to do so be an illegal contract"?

U. S. *vs.* Joint Traffic Ass'n, 76 Fed. Rep., 895, 897.

An eminent judge of wide commercial experience has well said:

"An agreement to be no longer a party to such a system of unfair competition strikes us as being *eminently in the interest of good morals, fair and free trade, and honest rivalry in business.* If dry-goods houses in a certain town should agree to employ *no drummers* for trade, or hotel-keepers to employ *no runners*, the contract would be much of the same character, and we see nothing illegal about it."

Koehler *vs.* Feuerbacher, 2 Mo. App., 11, 15.

The question in all such cases is whether "this is an honest and upright contract" and one "by which the public are not injured."

Wickens *vs.* Evans, 3 Y. & J., 318, 330.

3. The charge that an arrangement to divide commissions with persons shipping cattle to Kansas City which had previously been consigned to a competing market is accorded extensive elaboration. This is so palpably different from State legislation intentionally discriminating against the products of other States that it needs no argument to demonstrate it. If the proprietor of an hotel or restaurant should direct that no dressed beef should be served to his guests unless first inspected by one of his employés, he certainly would not infringe upon the commercial power of Congress by excepting meats from local packing-houses from his rule. Indeed, he would not do so if he expressly refused to purchase meats coming from another State and for that precise reason.

4. In one paragraph it is said that "the amount of the commission is paid *by the owner of the cattle*, and the greater the commission the less are the net proceeds of his shipment." Later on the exigencies of the occasion impelled the same counsel to say that "the charge enters into and becomes a part of the price for which this food product is sold," namely, the buyer or consumer makes the payment.

The fact that the former is true proves no criminality, unless, indeed, it can be said that the charge of any commission whatever is equally wrongful. So long as a reasonable compensation for services actually rendered is the extent of the "restraint," there can be no wrong, for without such a service and compensation therefor there would and could be no trade.

If the consumer pays for the service it cannot be pretended that he would pay less because the former owner had received a rebate or been the beneficiary of a discrimination infinitely more reprehensible than a division of commissions with another person following the same occupation at a competitive market.

5. After asserting that "the defendant commission men are engaged in *promoting* this trade," and that the rules at bar operate as *regulations* for the conduct of the trade thus furthered (neither of which statements are open to denial), counsel claim that by this act "Congress has assumed jurisdiction of all matters *relating directly or indirectly* to interstate commerce."

The two statements first made demonstrate that there is no *restraint* of trade, and the latter is in the teeth of U. S. *vs.* E. C. Knight Co., 156 U. S., 1.

A sentence is quoted from *Ex parte* Debs to the effect that individuals may no more obstruct such commerce by their acts than a State by legislation. Doubtless a conspiracy to obstruct such commerce, the end or the means, or both, being unlawful, is an offense against Federal authority; but that does not prove that a mere regulation, the ends and means being both otherwise perfectly lawful, is a violation of the statute under consideration.

The entire argument is built upon these propositions:

a. That an association of persons engaged in a mere private service, including an exchange intended, among other

things, to establish uniformity, is in law subject to the same rule which condemns combinations to fix the price of commodities or articles of prime necessity.

b. That regulations for the orderly conduct of such an occupation are necessarily a restraint on trade.

In support of *a*, More *vs.* Bennett, 140 Ill., 69, and People *vs.* Fisher, 14 Wend., 1, are relied on, followed by extensive quotations from cases concerning combinations of the other class noted.

The distinction between the different classes referred to is emphasized and established by a multitude of cases which are noted in the appellants' principal brief (pp. 51–57, 239-245, 249).

As to *b*, counsel has quoted that the early common-law rule on the subject of contracts in restraint of trade has given way to a more liberal rule, the former having been made "under a condition of things or state of society far different from those which now prevail." By a startling process counsel has completely reversed the thought thus phrased. The same quotation is now urged as authority for the conclusion that Wannel's case and the many approving the rules there laid down have been overruled. These cases run back to the earliest days and, except in this case, have been accepted as indubitably correct. It is there established that a regulation for the orderly conduct of an occupation, framed and administered by those best fitted and most deeply interested in its welfare, is in no sense a restraint, reasonable or unreasonable, within any possible view of the question (Appellants' Brief, pp. 99–101, and *supra*, herein). The difference in conditions and in the state of society doubtless emphasizes the soundness of these authorities, but it certainly does not operate to overrule them.

6. Whether it be true that the purpose of exchanges is to stifle competition can be judged by what is said in the principal brief. Until very recently no such thought has ever entered the mind of even the most extreme critic of modern conditions. If it be true that their purpose is to establish uniformity in charges and usages, to suppress favoritism and improper practices, to build up and maintain a market and its good name, to inspire public confidence, and to regulate for the protection of the rights and interests of all, and so it is unanimously said by those who have given the matter a comprehending and discriminative consideration, their annihilation or to deprive them of some of their most potent powers for good would be a most appalling commercial calamity.

It is not an instance of welding many diverse interests into a partnership. An exchange is not engaged in business at all. It merely provides rules and machinery for the doing of business and regulates the manner in which its members shall do business or exercise an occupation to the ends above reiterated.

Even the case of Hoffman *vs.* McMullen, 83 Fed. Rep., 372, cited by the appellee, and which was decided largely on the authority of what was said in Hyer *vs.* Richmond Traction Company, 80 Fed. Rep., 839, and before this court had sanctioned the views of Judge Brawler in that case (18 Sup. Ct. Rep., 114), although otherwise without proper analogy, distinctly recognizes that "there may be a combination that *saves* as well as a competition that *kills*" (at 377).

No one claims that there is magic in the title "exchange." That the form of organization which prevails in a typical and real exchange for beneficent purposes is simulated and the name adopted by parties desirous to serve a legally reprehensible purpose, instead of placing them on the same basis under the law, serves to emphasize most strongly the high standing to which such a body as this is entitled. The

situation is not without precedent. The livery of the good or harmless has many times been assumed by the vicious and dangerous.

Hence it is that the New York cases concerning exchanges, many in number and uniform in tone and conclusion, constitute the strongest conceivable authority in our favor. The same differentiation observed by those courts between unlawful organizations and real commercial exchanges, if applied here, will make the solution of this appeal both easy and to the interests of the public.

7. The fact that the packers, so called, belong to this exchange has already been elucidated. Every exchange embodies a representation of both buyers and sellers. Unless it did so, there could be no trade. "It takes two to make a bargain." Indeed, it is said in one of the quotations made by the appellee, as being descriptive of an "ideal exchange," that "the market rises to its *highest efficiency and value* when it *concentrates* into one focus (the largest possible) portion of *the buyers and sellers.*"

Here there is no pretense that the packing-house managers are being coerced or otherwise interfered with. For reasons satisfactory to themselves, and which are palpably deserving of commendation, they have voluntarily become members of the exchange. They have no desire to withdraw. If there is a constitutional right to contract, as is insisted, why convict them of a crime for exercising that right and for observing a valid contract thus entered into under the protection of a constitutional guaranty? The sum and substance of the complaint in the present instance is that these gentlemen are keeping the contract they have thus made. "There are mutual advantages, and the duty to observe the rules is but the equivalent for the benefits derived" by them from the maintenance of the market and an efficient system of inspection, and the enforcement of the rules requiring a prompt performance of all contracts made,

and otherwise preventing wrong-doing and commercial anarchy.

Player *vs.* Vere, T. Raym., 324, 327.

Certainly the packers may buy from whom they please, with or without reason. This is the true meaning of the constitutional right to contract. They cannot, by means of a mandatory injunction or otherwise, be compelled to buy from those whose success, either in fact or as they honestly believe, will be to their ultimate injury, nor to break contracts they are desirous to observe. Instead of it being a crime on their part to exercise these acknowledged rights, it is an unpardonable infringement of their status as freemen to undertake to control them in the premises.

8. These considerations, constantly to be borne in mind, show the utter inapplicability of any of the highly refined rules undertaken to be applied on "social grounds" in some of the modern conspiracy cases. The present is merely an instance in which certain persons are exercising inalienable and undeniable rights, as a result of which another cannot complete as successfully as he desires. No well-considered case has ever held that a person is entitled to the privileges of membership without being a member; much less, that although he refuses to become a member, he is entitled to compel the affirmative aid of the members to the end that he may victoriously overcome the organization and its constituent members who are his competitors.

Even Vegelahn *vs.* Guntner, 167 Mass., 92, recognizes that—

"A combination among persons merely *to regulate their own conduct* is within allowable competition and is lawful, although others may be indirectly affected thereby."

The idea that because a person has made and is willing to keep a lawful contract he is thereby under a constraint

amounting to moral intimidation is a startling conception. It is a wrong to *break* such a contract, and by this newly evolved theory he is to be stamped as conclusively a criminal *for not committing that wrong.*

Nor can an observance of obligations, lawfully and voluntarily assumed, be deemed to evidence malice against another. This is recognized with more or less clearness in all the cases cited by adversary counsel; certainly so by Temperton *vs.* Russell and Flood *vs.* Jackson.

The case of Flood *vs.* Jackson has very recently been reversed by the House of Lords. The information given by the press is not sufficiently full to warrant a statement of the conclusions there reached, nor has a copy of the opinion been obtainable. It is foreshadowed that Temperton *vs.* Russell has been in effect overruled, and views expressed in line with those announced by Judge Holmes in Vegelahn *vs.* Guntner, 167 Mass., 92.

The theory that because competitors are not permitted supinely to succeed, the association, formed ten years before, is thereby transformed into a criminal conspiracy, logically means that competition is itself unlawful. Competition implies an effort to succeed to the disadvantage of trade rivals. The fruition of that effort on the part of one can only come when a less degree of success has attended his rival. To say that one must compete with might and main and use every possible available instrumentality and is guilty of a crime if he contracts not to do so, and that he is equally guilty (indeed, under the very same section of the statute) if his efforts result to the financial injury of a trade rival, is worse than a strange perversion and involves a monstrous inconsistency; it is *an absolutely impossible standard.*

Were it conceivable, it would be made even more so by the doctrine that an agreement among the members of a single partnership or between officers of a single corporation may form the basis of a conspiracy (People *vs.* Duke, 44

N. Y. Supp., 336). As applied to the present case, this can only mean that every trading firm in the land *must permit its competitors to succeed*, and even *help them to do so*, or stand conclusively guilty of a criminal offense.

Curran *vs.* Galen, 152 N. Y., 33, proceeds upon the ground that a combination without lawful excuse and intended to injure another, and directed against a non-member free from binding obligations voluntarily assumed, is actionable. The court was, however, careful to say that "in the general consideration of the subject it must be premised that the organization or the co-operation of workingmen is not against any public policy; indeed, it must be regarded as having the sanction of law when it is for *such legitimate purposes* as that of obtaining an advance in the rate of wages or compensation or of *maintaining such rates*."

9. The ultimate construction of the second section of the act of July 2, 1890, will doubtless be attended with great difficulty and involve exceedingly careful consideration. As this exchange is not engaged in business at all, it cannot be or become a monopoly. That its members in the aggregate—each, however, acting for himself—have succeeded or will succeed in being selected whenever a commission merchant is desired to be employed, or even in making it essential to a satisfactory sale that such employment shall be had, involves no element of a prohibited monopoly. If so, then every merchant who seeks to gather all the trade of a locality to himself is by that ambition (and certainly by his success therein) irretrievably guilty of a crime.

In the trans-Missouri case each defendant railroad company was a "virtual monopoly" (166 U. S., at 336); but no one supposed, even for an instant, that for that reason its officers and directors were guilty of an offense (People *vs.* Duke, 44 N. Y. Supp., 336). It was not even claimed that the combination of "virtual monopolists" into a freight association was a violation of section 2.

The stress of the case has driven counsel to contend that whenever a given business, such as those involved in Munn *vs.* Illinois and kindred cases, has reached a magnitude justifying a State regulation of rates—*i. e.*, if it has become a "virtual monopoly"—the further continuance of that business, if it operates on commerce among the States or "stands in the gateway" thereof, makes the proprietors amenable to section 2 of the Federal act.

Misconceptions of this nature and the loose use of terms are responsible for such grossly erroneous statements as are to be found in More *vs.* Bennett, 140 Ill., 69, and Greer *vs.* Payne, 4 Kans. App., 153. In both the vital distinction between trade and an occupation was wholly ignored. Each assumed that the organization itself was engaged in business. It is charitable to conclude that the term "monopoly" was intended to be used in a sense far different from that given it by the law.

Referring again to Greer *vs.* Payne, it is to be noted that:

a. The statute relied on is not the basis of this case.

b. That statute is, however, clearly unconstitutional, for reasons assigned on page 189 of the principal brief and reinforced by what is said and quoted on pages 214*b* and 214*c*.

c. The complaint in that case charged the elements of illegality, and the ground upon which the decision was based was that *upon their own showing* the plaintiffs could not be heard; hence what is said in addition was merely *obiter* and can apply only to the facts assumed; it does not prove *those facts to be true.*

d. The points of defense urged by counsel for the defendants in that case did not involve the legality of the organization or its rules, and no showing was made on the subject, as is done here.

e. The case strongly emphasizes the danger of passing on such cases on mere *ex parte* statements of angry litigants and without a careful attention to the precise actual facts.

Inspired, manifestly, by that case and blinded by zeal for a private clientage, the brief for the appellee contains a remarkable array of alleged statistics to prove that this case involves a saving of $5,000,000 to the cattle shippers of the West during the next decade.

The record reference (p. 78) shows the total number of cars of *all classes of live stock* received at this market. It does not show how many of the cars contained, respectively, cattle, hogs, sheep, horses, and mules. To the aggregate received during the past ten years (stated to be 1,000,000, but really 947,649) the average charge of $10 per car is applied by counsel. Looking at the numbers of the various classes which are stated on the same page, it is a most liberal estimate that out of the total only one-half the cars contained cattle. The defendants have no concern with the horses and mules, which must therefore be deducted. The remainder were hogs and sheep.

Assuming that there were as many as 500,000 cars of cattle, and that the horses and mules filled 27,000 cars, there were 420,000 cars of sheep and hogs. The commissions on these under the rules were, on cattle at $12 per car, $6,000,000, and on hogs and sheep at $6 per car, $2,520,000—a total of $8,520,000. The uncontradicted proof shows that from 50 to 70 per cent. of this amount was paid for *necessary expenses* incurred in earning the commissions (Rec., p. 182), which are computed at rates prevailing throughout the United States and are universally conceded to be reasonable (Rec., p. 180; Brief, p. 214*w*). Taking the average of the expenses to be 60 per cent., the net result is $3,408,000, or, on an average, $340,800 per annum.

If the average number of commission merchants during this period be taken to be 150 (they are now 200), the amount

realized to each per annum from this source was $2,272, which, considering the skill and capital invested, the amount of labor done, and the fidelity displayed, is so palpably a reasonable return as to leave no room for doubt on the subject.

It appears by the Record (p. 127) that the total value of the live stock thus sold during the decade under consideration was $760,400,000. There is not a single instance in all these vast transactions in which the exchange has failed in its purpose to protect the shippers and buyers and to prevent wrong-doing. The gross commissions charged were at the rate of *one and one-eighth per cent.* on the proceeds realized, and the net returns to the commission merchant were less than *one-half of one per cent.*

These conclusions are wholly incompatible with the existence of a "grasping monopoly." As rebates were formerly only granted to a few and the deficit resulting from a discharge of the occupation for less than the actual expense attendant upon its proper performance had necessarily to be made up in some other way, the benefits of uniformity are clearly demonstrated. When it is remembered that in the natural course of things many commission merchants fall below this average, the truth of the showing (Rep., p. 182) that "for the greater part, the members of the said exchange, although they have been engaged in their occupation for years, are possessed of limited means only" becomes incontestably true. The exclamatory comment on this subject should more properly have undertaken to show how, in view of the figures disclosed by the record, this exchange has succeeded in restraining trade.

10. The course pursued in reviewing the authorities referred to in our principal brief is as novel as some of the contentions urged *sub nomine* the government. Without reference to the page referred to or the point in illustration or support of which our reference is made, counsel present

a quotation from a different page or on another subject discussed in the opinion, and conclude with an expression of inability to appreciate the relevancy of our citations. This result is most confusing, and unfortunately will add greatly to the labors of the court.

So, too, the relevancy of the history of exchanges and of the many unstinted commendations showered on them in all ages and from all authorities, who were properly equipped by study and the possession of knowledge to express an opinion in the premises, is not apparent to counsel. In truth, the bearing is most potent, and the force of these conclusions has not been attempted to be broken, unless it be by the statement that no other exchange will be affected by the result. The answer (Rec., pp. 163, 164) distinctly alleges that this body is but a type of the many well-regulated exchanges existing throughout the civilized world. The showing that a decree as herein prayed for will, if affirmed, be the death-blow to all exchanges on American soil was and remains uncontradicted, and the disastrous result of its rulings was conceded by the circuit court (Rec., p. 269), but regarded as an immaterial consideration.

The review presented in our principal brief is intended to aid the court in understanding the purposes of exchanges and the scope of their several rules; to demonstrate the view taken of them by courts, statesmen, political economists, the commercial world, and the public generally. The very fact that courts have been so seldom called upon to consider the legality of the rules here attacked is of the utmost importance, in view of the countless instances in which a question on the subject would, if room there was for one, most naturally and with unmistakable certainty have been presented and strenuously urged. The rules of law and the authorities presented in support of the pending proceeding are not so obscure or completely hidden that they can be said to have been beyond the knowledge of counsel and courts concerned in deciding cases affecting exchanges in the past.

Under the circumstances, and considering the number of the persons and the vast amount affected, a negative line of authority is of the very greatest conceivable authority. That character is best which has never been challenged.

11. The London Stock Exchange has apparently been the source of an unusual amount of perturbation to counsel. In the circuit court it was said by the same counsel: "We entertain a high respect for the London Stock Exchange, in which gambling and wagering contracts *are prohibited*." Here the statement is: "in which gambling and wagering contracts *are not prohibited*." Again, it is said: "The London Stock Exchange is under the supervision of the government," which is an entire error. On the contrary, the royal commission, in recommending that it be incorporated, imposed the important qualification that the *element of self-government* should be *carefully preserved*. The matters shown on pages 107–112, 135–139, and 214*et seq.* of our Principal Brief disclose that counsel is equally at sea in respect of the other points of alleged difference, the presence of which, it is declared, would mark an institution that "would not be tolerated, even in the absence of an anti-trust act."

12. The counter "series of inquiries" indicate a conception on the part of counsel concerning commercial matters which not even Mr. Bellamy would apply in his exploited chimerical Utopia of centuries hence. Exchanges and their rules are beyond criticism, even at his iconoclastic hand.

These answers occur (among many others already outlined) to the inquiries so suggested:

a. The privileges of exchanges are incident to membership in good standing only.

b. The idea seems to be that the honorable men engaged in an occupation should, by means of an exchange, build

up and strive to maintain a market, merely to the end that those who owe no allegiance to the body and who announce a purpose conspicuously to violate its rules may succeed in destroying or impairing the good name of the market in question. To the contrary, the royal commission solemnly concluded that *the interests of the public* imperatively require that *all brokers* should be within the jurisdiction of the exchange and its rules. (Brief, p 214*x*.)

c. The reason the packing-houses are represented in the exchange appears in the Record (pp. 165, 179) and has been further elaborated *supra*. If buyers were not included in the membership, there could be no market, and it could never come to pass that the actual value of property which is dealt in at an exchange is best determined by the prices there realized or the reasonable value of services rendered by the schedule fixed by such a body.

People *vs.* Coleman, 107 N. Y., 544.
In re Gould's Estate, 46 N. Y. Supp, 506, 511, 512.
Comm. *vs.* People's Traction Co., 39 Atl. Rep., 42, 44 (Pa.).
Gilman *vs.* Stevens, 54 How. Pr., 197.

d. The success of non-member competitors means the destruction of the exchange and of the market it has built up and a consequent loss to all its members. This of itself justifies rule XVI and makes it absolutely essential.

e. Any obligation of the packers in the premises, as has been repeatedly explained, arises wholly from *a contractual relation into which they have voluntarily entered* and which they are the most desirous of *adhering to*. They have made their choice. The present action seeks to deprive them of the constitutional right to do so. *They are appellants here* praying a reversal of the order appealed from.

f. The result of a want of uniformity in commissions and of irregular practices in other respects is a serious injury to the market, and that injury is necessarily visited most heavily on the reputable and innocent. (See Principal Brief, pp. 214*cc*, 214*dd*.)

g. It is better for the public and for the trade in general that a reasonable uniform commission be charged than that rebates and favoritism should prevail, the loss incident to granting which must inevitably be retrieved by underhand practices.

h. The defendants, being engaged in a mere private occupation, have a lawful right, sanctioned by constitutional guaranties, to fix the wages at which they are willing to serve.

i. That the entrance fee of $2,500 is "the price which the privilege of the monopoly commands" is the grossest of errors. The exchange is not organized for profit. It does not sell the privilege of membership for the sake of profit, nor does it declare dividends. Its income is used solely to defray the expenses of inspection departments and transportation bureaus, and to the promotion and development of the market. The exchange has no monopoly to sell. Each member must compete with every fellow, and all of them with the world at large.

The membership fee is merely a guarantee that the member elected will live up to the rules. Fines cannot be collected by legal process. Submission to suspension or expulsion or a surrender of membership exhausts the power of the exchange. If the guarantee were small, there would be a constant temptation to weigh this amount against the profits to accrue from an improper practice. A member might yield, as he has been known to yield, when the investment in his membership (the value of which measures the maximum penalty which the exchange can inflict and

enforce) was but small in comparison with what might be realized by wrong-doing. Unfortunately, human nature is not always proof against temptation. Rules of such bodies, as are public laws, are designed to *deter* from improper conduct. Experience has demonstrated that $2,500 will ordinarily cover any benefits to be derived from a breach of contract, a failure to remit, or a violation of the rules in other respects. By fixing this amount the probabilities of wrong-doing are reduced to a minimum. Hence, as the market has grown and a necessity for an increase of guarantee has developed, the membership fee has risen in response to the requirements of the occasion.

In practice, however, this exchange receives no income from this source, as memberships are now universally bought from holders desirous to retire from business or the like.

Again, the calling is one of great responsibility. The public is entitled to be assured that the guarantee implied in permitting a person to hold himself out as the member of an exchange is one of substance. The exchange cannot become liable to pay losses, but it can and does compel its members to keep their contracts. "More violations of rules in respect of these matters have been made the occasion of discipline than for all other causes" (Rec., p. 179; Principal Brief, pp. 159–162, 214*w*, 214*x*). Its power in this respect is great or small in proportion to the value of the membership at stake.

j. It is true of all the matters covered by the rules that the provision made is the result of long experience and vigilant attention on the part of those best qualified to judge and most deeply interested in deciding justly. Any attempt to overrule these provisions "would be detrimental to *the honest and efficient conduct of business.* * * * Such a body can hardly be interfered with without destroying that freedom of self-government which is the *only life and soul of business.*" (Principal Brief, p. 214*x*.)

It is not a question of forming an exchange satisfactory to those who desire to reap its advantages without assuming the obligations of membership, and to reap where they have not sown, or who are bent upon tearing down and destroying what others are striving to develop and maintain. Complimentary as the allusion to the "consummate ability" of the appellants' counsel may be, it is far beyond human power to work miracles or to accomplish impossibilities.

13. It will be noted that the answer (which has at least the force and effect of an affidavit under the 41st equity rule, as amended, and which it was in nowise undertaken to contradict) distinctly and specifically pleads that all other commercial exchanges possessed the same characteristics and rules which are here attacked as proof conclusive of criminality (Rec., pp. 163, 164). If all that is disclosed by a detailed review of these rules, taken from standard text books, governmental reports, and authorized current publications (and therefore the subject of judicial notice, as shown in the Principal Brief, p. 93), be discarded, the fact of complete identity on the part of all typical exchanges (and all that it proved or implied as a result) stands disclosed by the record and is nevertheless undisputed, uncontradicted, and beyond cavil.

14. That exchanges have accomplished their mission is conceded, for counsel say "that the formation of exchanges may be admitted to have *benefited trade and commerce.*" If this consummation is lawful, how can the means by which it was reached be adjudged to be criminal? A still stronger admission is disclosed by the fact that the citation of cases in support of the oft-repeated assertion that exchanges cannot override the law is limited to two classes:

a. Those condemnatory of *wagering contracts:* but as every reputable exchange sternly prohibits these, the litigation on the *subject marks a violation of exchange rules,* not a

void provision, and generally discloses that exchanges will not lend their aid to enforce such dealings.

b. Those holding that in matters of contract a rule of an exchange does not bind *an absolute stranger thereto.*

These propositions are wholly foreign to any issue in the present case. The phases of exchanges which are here involved fall within the commendatory paragraphs of the quotations from Professor Jevons and Mr. Wheatley. So far as the pending questions are concerned, these authors but supplement what every thoughful writer has said on the same subject.

15. If the welfare of trade had not called for an adequate code of regulations for its orderly and honorable conduct, exchanges would not have come into being, nor multiplied throughout the civilized world, nor stand authorized and sanctioned by legislation, by the courts, and all departments of government. It is not believed that any positive, unbending legislative enactment exists the terms of which so unmistakably indicate a legislative intent that these beneficent bodies are to be destroyed, and that this court is powerless to avert the disaster to our commercial welfare and development, which is sought to be inflicted by means of this proceeding. We entreat a dispassionate perusal of the order appealed from in proof of our claim that its commands are destructive of the most cherished rights of American citizens, and in the teeth of constitutional guaranties hitherto regarded as of the most sacred character—propositions which are fully covered by the assignment of errors. (Rec., pp. 280–283.)

Respectfully submitted.

L. C. KRAUTHOFF,
Of Counsel for Appellants.

KANSAS CITY, MO., *February* 15, 1898.

No. 240.

FEB 19 1898
JAMES H. McKENNEY,
CLERK

Brief for Appellants

Feb. 19, 1898.

In the

Supreme Court of the United States,

OCTOBER TERM, A. D. 1897.

No. 538.

HOPKINS et al.,
Appellants,

vs.

UNITED STATES,
Appellee.

On Certificate from and Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF JOHN S. MILLER, FOR THE APPELLANTS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 533.

HENRY HOPKINS ET AL., *Appellants,*
vs.
THE UNITED STATES, *Appellee.*

On Certificate from and Writ of *Certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF JOHN S. MILLER, FOR THE APPELLANTS.

The writer of this brief is the counsel of The Chicago Live Stock Exchange and of other live stock exchanges, which, while not parties of record to this present suit, are affected by its decision. He appears here and files this brief, by authority of and for the appellants.

There are similar live stock exchanges to that of which the appellants are members, in Chicago, East St. Louis, St. Louis, South Omaha, Sioux City, Fort Worth, and other cities. Some of them are incorporated associations under the laws of the respective states where they are situated, others are voluntary, unincorporated associations. These associations, including the Kansas City Exchange, of which appellants are members, were or-

ganized, and their rules adopted, so far as appears, prior to the passage of the act of Congress of July 2, 1890. The appellant Exchange was formed in 1886, as a voluntary, unincorporated association, whose articles of association and whose rules are the voluntary agreement of the members. The purpose of the appellant exchange, as stated in its agreement of association, is that "of organizing and maintaining a business exchange, not for pecuniary profit or gain, nor for the transaction of business, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to promulgate and enforce amongst the members correct and high moral principles in the transaction of business;" and for the purpose aforesaid, the members agree each with the other to observe and be bound by the rules and by-laws of the association. (Print. Trans., p. 27.) Any person of good character, and of legal age, whose interests are centered at the Kansas City Stock Yards, is qualified for membership; but the larger number of the members are engaged at the Kansas City Stock Yards as commission merchants or brokers, who receive consignments of live stock for sale at those yards and sell and account for the proceeds of the same to the shippers, for a compensation or commission charged for such services. The leading features of the rules of the appellant exchange which are agreed to by the members are these:

1. The requirement that the members shall comply promptly with the terms of their business contracts and obligations, and the prevention of improper conduct on the part of members, or the willful violation of business contracts or obligations, acts of bad faith, attempts at extortion or other dishonorable or dishonest conduct on

the part of any member. (Pr. Tr., pp. 31, 32; Rule 4, Secs. 6 and 7.)

2. Provision for means of arbitration of disputed claims voluntarily submitted to the board of arbitration thereby provided, by members of the Exchange, and the provision for a review of any award made upon any such arbitration, and the prompt and speedy hearing and determination of controversies between members by means of such arbitration. (Rule 7, Pr. Tr., 37 to 40.)

3. Provision for looking after transportation rates in the interest of patrons of the members of the Exchange. (Rule 17, Pr. Tr., 48.)

4. Provision for securing for shippers of live stock to members of the Exchange at the Kansas City yards, payment for their live stock sold, where such live stock may be purchased by "dealers"—a class containing some irresponsible men—who may pay for live stock through commission merchants, members of the Exchange, by requiring beforehand from members a disclosure and list of such dealers, for whom members of the Exchange will undertake to be responsible. (Rule 21, Pr. Tr., 49.)

5. Provides for a just and uniform system of inspection by competent inspectors of hogs shipped to said yards for sale, and a regulation, in the interest of the shippers, of the amount of "dockage or shrinkage" allowed pregnant sows and stags, and against the sale of injured or diseased hogs. (Pr. Tr., 52–55.)

There are these further features in the rules, which are here next stated separately, because they are the point of attack which is made by the Government upon the appellants in this case:

6. A rule fixing the minimum rate of commissions to be charged by members of the Exchange for selling live stock, and, in that connection, regulating the employment of solicitors and the prepayment of telegrams and messages, through which means the evasions of the commission rule and other rules are most likely to occur. (Rule 9, Pr. Tr., 42 to 46.)

7. A provision that no member shall transact any business with any person violating any of the rules of the Exchange, or with an expelled or suspended member. (Rule 16, Pr. Tr., 49, 50.)

These rules being agreed to and observed by the honorable members of the Exchange, and enforced as the rules against those who violate them, the question presented in this case is :

Does this association of men come within the condemnation of the act of Congress of July 2, 1890, which was passed to protect trade and commerce against unlawful restraints and monopolies ?

The injunction order in this case, which is here sought to be reviewed, orders and decrees:

> "That the defendants herein, and each and every one of them, their agents, servants and employes, be and they are hereby enjoined, either as associates in the Kansas City Live Stock Exchange, or otherwise, from combining, by contract, agreement or understanding, express or implied, so as by their acts, conduct or words to interfere with, hinder or impede others in shipping, trading, selling or buying live stock that is received from the states and territories at what is known as the stock yards at Kansas City, Missouri, and Kansas City, Kansas, and shipped there from other states and territories for sale there or for further transportation, or for sale in, or shipment to foreign markets.

"And it is further ordered and decreed that the said defendants either collectively as such Kansas City Live Stock Exchange, or through its board of directors, or otherwise, and each of them, their agents, servants or employes, be and they are hereby enjoined from enforcing, or recognizing, or acting under the following rules of said Kansas City Live Stock Exchange, to wit: rules 9 and 16, each and every section thereof, and any and all amendments thereto in respect to such live stock, and from imposing, or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange, for trading or offering to trade with any person or persons at said stock yards, respecting the purchase and sale of any such live stock; or from discriminating in favor of any member of said Kansas City Live Stock Exchange, because of such membership; and especially from in any manner discriminating against any person trading at said stock yards in such live stock, and from refusing, by united or concerted action, or by word, persuasion, threat or other means, to deal or trade with persons with respect to such live stock, who are not members of said association, because of such non-membership; or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such live stock, at said stock yards, and the same as if such Kansas City Live Stock Exchange did not exist.

"And it is further ordered and decreed that the defendants, and each of them, their servants, agents and employes, be and they are hereby [joined] and prohibited from entering into any contract, agreement, combination or conspiracy fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock, shipped from one state or territory for sale or disposition in another state or territory or in foreign countries, also from entering into any contract, agreement, combination or conspiracy limiting or attempting to limit the right of any person in business at Kansas City stock yards to employ labor or assistance in

soliciting shipments of live stock from other states or territories, or the right of any such person to send telegrams, prepaid or not, from said stock yards to any other state or territory." (Print. trans., 277-8.)

Of the first paragraph of the injunction order, it may be said that the appellants have done nothing of the kind.

The purposes of the Kansas City Live Stock Exchange or of its rules do not call for or contemplate nor does the association carry out or seek any interference with the conduct of others, but their scope and operation are confined entirely to the members of the Exchange, who agree to be bound thereby. Nor have the acts of the members of the Exchange in obedience of any rule of the Exchange, in any way interfered with the acts or conduct of others, but have been confined to the matter of the business and conduct of themselves.

By the second and third paragraphs of the injunction order the appellants are enjoined—whether they act collectively as such Exchange or through its board of directors, or each acts individually in the exercise of his own personal right—from either enforcing or recognizing or acting under Rules 9 or 16 of the rules of the Exchange, or imposing fines upon members for trading with any person at said stock yards respecting the purchase and sale of any live stock received from the states and territories at the Kansas City stock yards, and from in any way discriminating against any person trading at said stock yards in such live stock, and from refusing to deal or trade with persons with respect to such live stock who are not members of said association, because of such non-membership, and from entering into any contract or agreement, as well as combination or conspiracy, fixing or tending

to fix the price to be charged as commissions for buying or selling live stock shipped from one state or territory for sale or disposition in another state or territory or in foreign countries, and from entering into any contract or agreement, as well as combination or conspiracy, to limit the right of any person in business at said stock yards to employ labor or assistance in soliciting shipments of live stock or to send telegrams prepaid or not from said stock yards to any other state or territory.

It will be seen that the court below has substantially enjoined the appellants from associating at all, respect- the purchase or sale of live stock which is received from the Kansas City stock yards from other states or territories. And it is plain that, at the least, the Circuit Court has construed and applied the act of Congress of July 2, 1890, to extinguish the Kansas City Live Stock Exchange for all purposes, and to forbid the persons who are its members from regulating their own private business in the handling, purchase and sale of such live stock. If Congress had the unrestrained power to deprive appellants of those personal rights of liberty and private property and freedom of contract which are secured as our constitutional right and inheritance, and had enacted a law which in terms extinguished the Kansas City Exchange and forbade the persons who are its members from further continuing their business of the purchase and sale of such live stock, such act could not have a broader or more direct application to sustain the injunction order herein than the learned Circuit Court has given to the act of July 2, 1890, in this case.

The very exhaustive and able argument filed herein by Mr. Krauthoff for the appellants has covered the field of authority and the learning upon the questions involved

in this case, with a thoroughness and industry which leaves nothing to be said that is not well said in that argument. We cannot add anything to his argument; and we shall not try to cover, in this brief, the case as he has done, but shall try to summarize and state with conciseness what we have to say upon such portions of the case as we think we may in this brief touch upon.

Upon the point that the business and dealings of appellants are not interstate commerce among the states within the meaning of the act of July 2, 1890, we shall leave the case upon Mr. Krauthoff's argument and add nothing.

BRIEF.

I. The business of the appellants is *juris privati* and not *juris publici*.

American Live Stock Com. Co. v. *Chicago Live Stock Exchange*, 143 Ill., 210, 236.
Ladd v. *Southern Cotton Press, &c., Co.*, 53 Tex., 172.
Seeligson v. *Taylor Compress Co.*, 56 Tex., 219.
Coggs v. *Bernard*, 2 Ld. Raym., 909.

II. It is only over business, which is affected with a public interest, that such legislative power of regulation and interference exists, as was upheld in *Munn* v. *Illinois*, 94 U. S., 113, and *Budd* v. *New York*, 143 U. S., 517.

III. It was not the purpose of the commerce clause of the Federal Constitution to interfere with the personal right and freedom of private contract as it existed at common law and under the laws of the respective states. *Railroad Co.* v. *Richmond*, 19 Wall., 584, 589–90.

The commerce clause and the power of Congress thereunder are subject to the prohibitions of the fifth and other amendments of the Constitution, which are known as the Bill of Rights.

Monongahela Navgtn. Co. v. *U. S.*, 148 U. S., 310, 336.

And it is perfectly well settled that those amendments were intended to embody those guaranties and immunities which we had inherited from our ancestors.

Robertson v. *Baldwin*, 165 U. S., 281.
Slaughter House Cases, 16 Wall., 36, 82.

It is clear, then, that these guaranties and immunities so embodied in the federal constitution are as secure against an act of Congress as they were against legislation by the states.

Sinking Fund Cases, 99 U. S., 700, 718.
Butchers Union v. *Crescent City Co.*, 111 U. S., 762, per Bradley, J.
Corfield v. *Coryell*, 4 Wash. C. C., 371.

IV. The right and freedom of private contract, and the sanctity of private property, as they have existed, are within that constitutional protection.

And such right and freedom of contract by persons, respecting matters which are *juris privati*, cannot be impaired by Congress. If this can be done at all, it can only be where it is shown that actual injury to the public results from the exercise of such right as it has heretofore existed.

And such injury to the public must be made to appear to the court, in order to sustain such an act of Congress.

V. The act of Congress of July 2, 1890, was not intended to interfere with the right and freedom to contract with respect to their business or employment, by persons engaged in private business or employment, which is not affected with a public use.

If it were so intended, it would be in violation of the Constitution.

Railroad Co. v. *Richmond*, 19 Wall., 584.
Butchers Union v. *Crescent City Co.*, 111 U. S., 746, 762.
Palmer v. *Tingle*, 55 Ohio St., 423; 45 N. E. Rep., 313.

Carew v. *Rutherford*, 106 Mass., 14.
People v. *Gillson*, 109 N. Y., 389.
Frisbie v. *United States*, 157 U. S., 160, 165.
In re Grice, 79 Fed. Rep., 627.
Allgeyer v. *Louisiana*, 165 U. S., 590–92.
Robertson v. *Baldwin*, 165 U. S., 281.
Live Stock Association v. *Crescent City, etc., Co.*, 1 Abb. U. S. R., 398.
People v. *Marx*, 99 N. Y., 377.
In Re Jacobs, 98 N. Y., 98, 107.
Toledo, &c., Ry. v. *Jacksonville*, 67 Ill., 37.
Lake View v. *Rosehill Cemetery*, 70 Ill., 192.
Frorer v. *People*, 141 Ill., 171, 181.
Braceville Coal Co. v. *People*, 147 Ill., 66, 71.

VI. The purposes of the association of appellants here in question are lawful and proper.

Boston, &c., Exchange v. *N. Y., &c., Ry. Co.*, 4 Inter St. C. C. R., 436.
Biddle, Stockbrokers, 40.
Dos Passos Stock Exch., 260, 261.
Melsheimer & Gardner, Stock Exch., 98.
Jones v. *Clifford's Executor*, 5 Fla., 510.
Dillaway v. *Alden*, 88 Me., 286.
Clark v. *Foss*, 7 Biss., 555.

VII. The rules of the association of appellants in question, which are the subject of attack in this suit, and which are the mutual agreements of the members, are

not in restraint of trade within the meaning of the act of July 2, 1890, but in promotion of trade.

Master Stevedores' Assn. v. *Walsh*, 2 Daly, 1.

Matthews v. *Associated Press*, 136 N. Y., 333.

Taff Vale Ry. Co. v. *McNabb*, L. R., 6 H. L., 169.

Printing, &c., Co. v. *Sampson*, L. R., 19 Eq. Cas., 462, 465.

Central Shade Roller Co. v. *Cushman*, 143 Mass., 353.

Live Stock Assn. v. *Levy*, 54 N. Y. Superior Ct. R., 32.

Long v. *Towl*, 42 Mo., 545.

Skrainka v. *Scharringhausen*, 8 Mo. App., 522.

Railroad Co. v. *Fuller*, 17 Wall., 560, 568.

Taff Vale Ry. v. *McNabb*, L. R., 6 H. L., 169, 176.

Nordenfeld v. *Maxim, &c., Co.*, App. Cas., 535.

VIII. The rules of the appellant association are not opposed to any public policy, but are the valid private contracts of the members.

Allgeyer v. *Louisiana*, 165 U. S., 578, 591.

Carew v. *Rutherford*, 106 Mass., 14.

Bowen v. *Matheson*, 14 Allen, 499.

Snow v. *Wheeler*, 113 Mass., 179.

Collins v. *Locke*, L. R., 4 App. Cas., 674.

Commonwealth v. *Hunt*, 4 Metc., 111, 128.

Palmer v. *Stebbins*, 3 Pick., 188.
Master Stevedores' Assn., v. *Walsh*, 2 Daly, 1.
Live Stock Assn. v. *Levi*, 54 N. Y. Superior Ct. R., 32.
Bohn Mfg. Co. v. *Hollis*, 54 Minn., 223.
Jones v. *Clifford's Exr.*, 5 Fla., 510.

IX. The rules of the appellant association which were in force when the act of 1890 was passed, and were then the valid contract of the members, are not affected by that act.

I.

The Business of Appellants is privati juris.

The appellants here are private citizens, engaged in a private business. Their business is not *publici juris* in any sense.

Coggs v. *Bernard*, 2 Ld. Raym., 909.
American Com. Co. v. *Chi. Live Stock Exchg.*, 143 Ill., 210, 236.
Saligman v. *Taylor Compress Co.*, 56 Tex., 219.
Ladd v. *Southern Cotton Pre. Co.*, 53 Tex., 172.

The commission merchants, or brokers, who are members of the Exchange, and whose action or conduct in such business is affected by the rules of the Exchange which are made the chief point of attack by the Government, are engaged in the business of buying and selling live stock for others for a commission charged and paid to them for the personal services of themselves and their employes. There is first to be noted this important dis-

tinction between these men and corporations or persons engaged in a business which is affected with a public interest, such as transportation companies; gas companies enjoying public rights, franchises or licenses; public warehousemen, whose business has been declared *publici juris* by statute, etc. This distinction between the association of persons engaged in a business which is impressed with a public interest and the association of commission merchants who are engaged in a private business is of importance upon the question of the constitutional right of freedom of private contract, and of the application of the trust act of 1890. That distinction has been emphasized in decisions in this court.

Gibbs v. *Baltimore Gas Co.*, 130 U. S., 396, 408.

U. S. v. *Freight Assn.*, 166 U. S., 290, 333–34, 336.

This fact is important in the consideration of the question whether if the act of Congress were to be construed to so restrict and diminish the right and freedom of private contract, as is claimed by the appellee here, it would not invade the protection and immunities of the Constitution. This fact distinguishes this case from the *Trans-Missouri Case*.

The present case presents the question whether the act of July 2, 1890, is to be held to be a beneficent act for the protection of the public against injury to the public interest, or is to be regarded as a mischievous interference with the rights of private citizens and the freedom of private contract. And if the act in question is to be construed as having the scope and extent of application claimed for it by the Government herein, and

given to it by the Circuit Court, this case illustrates admirably how the act may be invoked for the carrying out of private and personal ends; and how little there would be left of the right of private contract, if the act, with that construction, were to be sustained.

In *American Live Stock Commission Co.* v. *Chicago Live Stock Exchange*, 143 Ill., 210, 235-6, 238, it was contended that the members of the Chicago Exchange, doing business at the Union Stock Yards, Chicago, were engaged in a business which was impressed with a public interest, but the court refused to so hold. The court said:

> "It is not claimed that the keeping or doing business in a market of this character is one of the employments which the common law declares to be public; nor is it pretended that it has been made so by statute. Ordinarily the adoption of new rules of public policy, or the application of existing rules to new subjects, is for the legislature, and not for the courts. Accordingly it may be held to be a general, though perhaps not an invariable, rule that the question whether a particular business which has hitherto been deemed to be private is public and impressed with a public use is for the legislature. The doctrine on this subject is stated in *Ladd* v. *Southern Cotton Press Manufacturing Co.*, 53 Texas, 172, where a question very similar to the one under discussion was before the court, as follows: 'We know of no authority, and none has been shown us, for saying that a business strictly *juris privati* will become *juris publici* merely by reason of its extent. If the magnitude of a particular business is such, and the persons affected by it are so numerous, that the interests of society demand that the rules and principles applicable to public employments should be applied to it, this would have to be done by the legislature (if not restrained from doing so by the constitution) before a demand for such use could be enforced by the courts.' The view thus expressed

would seem to be precisely applicable to the present case, and we are inclined to adopt it as a correct statement of the law as it should be applied to the facts before us. We do not say that there may not be exceptions to the rule thus stated, but if there are they are not of such character as to be material here.

"Apart from the consideration that the extension and application of even existing rules of law to subjects not heretofore within their purview is legislative in its nature, the determination by the courts as to the precise point at which a mere private business reaches that stage of growth and expansion which is sufficient to render it *juris publici* would be surrounded with very great difficulties, and would present questions for which the courts, unaided by legislation, would be able to find no just or satisfactory criterion or test. But when the legislature, acting upon a competent state of facts, has interposed and declared the business to be *juris publici*, all difficulty is removed.

"The views here expressed do not conflict with what was decided in *Munn* v. *Illinois*, 94 U. S., 113. The question raised and decided in that case was as to the constitutionality of the act of the legislature of this state, declaring certain grain elevators to be public warehouses, and prescribing rules for their management, and fixing maximum charges for the storage and handling of grain. There the legislative department had interposed and declared the public use, and the court, in holding the act constitutional, held merely that the legislative power had been properly exercised. This was the only question, having any relevancy here, presented in that case or which the court undertook to decide, and the discussion of the evidence showing that the business carried on in said grain elevators was of such character that it had in fact become impressed with a public use, was only for the purpose of showing that a condition of things existed which justified the legislature in passing the statute then under consideration."

II.

It was not the purpose of the Commerce Clause of the Constitution, nor of the Act of July 2, 1890, to interfere with the freedom of private contract.

In *Railroad Company* v. *Richmond*, 19 Wallace, 584, 589-90, this court speaking by Mr. Justice Field said of the effect of the commerce power of Congress as exercised by certain acts then under consideration:

> "These acts were passed under the power vested in Congress to regulate commerce among the several states, and were designed to remove trammels upon transportation between different states, which had previously existed, and to prevent the creation of such trammels in future, and to facilitate railway transportation by authorizing the construction of bridges over the navigable waters of the Mississippi. But they were intended to reach trammels interposed by state enactments or by existing laws of Congress. They were not intended, even if it were competent for Congress to authorize any such proceeding, to invade the domain of private contracts, and annul all such as had been made on the basis of existing legislation and existing means of interstate communication. Contracts valid when made, continue valid, and capable of enforcement, so long, at least, as peace lasts between the governments of the contracting parties, notwithstanding a change in the conditions of business which originally led to their creation.
>
> The power to regulate commerce among the several states was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating state legislation; it was never intended that the power should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse.
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> * * * * *

> When counsel speaks of the public policy established by the acts of Congress mentioned, he must mean nothing more than that the acts were intended to facilitate commercial intercourse among the states. Undoubtedly such was the case, and it is of great public interest that such intercourse should be free and untrammeled. But if comparisons may be made with respect to a subject of this nature, we should say that the observance of good faith between parties, and the upholding of private contracts, and enforcing their obligations, are matters of higher moment and importance to the public welfare, and far more reaching in their consequences."

III.

It is over business which is affected with a public interest that such legislative power of regulation and interference exists as was upheld in Munn v. Illinois and like cases.

It cannot be made a matter of question that the decision in the case of *Munn* v. *Illinois*, was based upon the position that the business there in question was affected with a public interest. It is expressly stated in the opinion that this was the principle "upon which this power of regulation rests," and which the court there inquired into "in order that we may determine what is within and what is without its operative effect." (94 U. S., 125.)

And so in the *Sinking Fund* cases, 99 U. S., 747, this court said of the Munn case that "the inquiry there was as to the question of the police power in cases where the public interest is affected." And the same was said in the case of *Wabash Railway Co.* v. *Illinois*, 118 U. S., 569, and in the case of *Budd* v. *New York*, 143 U. S., 517.

And the rule laid down by this court as to the extent and scope of the police power in regulating the contracts or services of persons or corporations, and the price or compensation to be charged, is bounded by the line which divides that which is *privati juris* from that which is *publici juris*.

This is not to contend that the police power may not in any case regulate the private business of the citizen, or his right of private property. The police power to diminish or impair his right to contract, as it exists at the common law, and as his inheritance, is no greater than and is of the same nature as the police power to diminish or impair his private property. But in every case where such private business which is not impressed with a public interest has been so regulated, it has been in order to prevent an injury to the public welfare; for instance, an injury to the public health. And that question is open to the courts. It must appear to the courts that such public injury exists or will result, and it can safely be said that the power of the legislature to regulate or interfere with the contracts or business of individuals, which are not affected with a public interest, can be sustained only in those cases where such public injury or necessity is plainly shown.

In *People* v. *Gillson*, 109 N. Y., 389, the court, by Mr. Justice PECKHAM, speaking of the provision of the constitution of New York, that no person shall be deprived of life, liberty or property without due process of law, says:

> "A person living under our constitution has the right to adopt and follow such lawful industrial pursuits, not injurious to the community, as he may see fit. The term 'liberty,' as used in the constitution is not dwarfed into mere freedom from physical restraint of the person of the citizen, as by incarcera-

tion, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livehood in any lawful calling and to pursue any lawful trade or avocation."

And with respect to the police power of the state, the court said:

"That power has never yet been fully described nor its extent plainly limited further, at least, then this: it is not above the constitution, but it is bounded by its provisions; and if any liberty or franchise is expressly protected by any constitutional provision, it cannot be destroyed by any valid exercise, by the legislature or the executive, of the police power. The extent of this power has been the subject of discussion in this court; in the recently most important case of *In re Jacobs*, 98 N. Y., 107, the question was examined and most exhaustively reviewed by Earl, J., in his opinion. To re-open the subject now would be useless, and I refer to that case as authority for the statement that the legislature cannot without reason and arbitrarily infringe upon the liberty or the property rights of any person within the protection of the constitution of this state; and that if the legislature shall determine what is a proper exercise of its police power its decision is subject to the scrutiny of the courts. * * * Under an exercise of the police power the enactment must have reference to the comfort, the safety or the welfare of society, and it must not be in conflict with the constitution. The law will not allow the rights of property to be invaded under the guise of a police regulation for the protection of health, when it is manifest such is not the object and purpose of the regulation. * * * Courts must be

able to say upon a perusal of the enactment that there is some fair, just and reasonable connection between it and the ends above mentioned. Unless such relation exists, the enactment cannot be held up as an exercise of the police power.'"

In *Palmer* v. *Tingle*, 55 Ohio State Rep., 423, the court said that "one of the most valuable and sacred rights is the right to make and enforce contracts"; and continued:

"The word 'liberty,' as used in the first section of the bill of rights, does not mean a mere freedom from physical restraint or state of slavery, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Contracts and compacts have been entered into between men, tribes and nations during all the time from the earliest dawn of history; the right and liberty of contract is one of the inalienable rights of man, fully secured and protected by our constitution, and it may be restrained only in so far as it is necessary for the common welfare and the equal protection and benefit of the people. That such restraint of the right and liberty of contract is for the common, public welfare and equal protection and benefit of the people, must appear, not only to the general assembly, in the face of popular clamor, or the pressure of the lobby, but also to the courts; and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare and equal protection and benefit of the people."

IV.

The power of Congress under the commerce clause of the Constitution is subject to all the limitations by which the police power of the States is restrained.

In *Monongahela Co.* v. *U. S.*, 148 U. S., 310, 336, this court held that the commerce clause and the power of Congress thereunder are subject to the prohibitions of the Fifth Amendment of the Constitution. It is equally clear, under the decisions of this court, that this power of Congress is limited by all of the first ten amendments of the Constitution. The fifth amendment provides that no person "shall be deprived of life, liberty or property without due process of law." Among the first ten amendments of the Constitution this article is the great bulwark, the *Magna Charta* of personal liberty and right, as against any encroachments on the part of Congress.

In *Robertson* v. *Baldwin*, 165 U. S., 281, this court, by Mr. Justice BROWN, said that

> "The law is perfectly well settled that the first ten amendments to the Constitution, known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well recognized exceptions arising from the necessities of the case."

The power of Congress is such as the Constitution gives. It must be found in the provisions of that charter. The power of the legislatures of the states is not given by their constitutions, but is the sovereign power of the people limited only by the restrictions found in the Con-

stitution. The rule of construction of the power of Congress under the commerce clause, and the rule for determining the police power proceed from different standpoints. The police power is the broader and the power of Congress narrower. The guaranties and immunities which are given to the rights of persons, it is clear, cannot be invaded by Congress. But if at all, certainly not where they could not be impaired by state legislation.

The power of Congress is no greater to deny or interfere with the right of stevedores or locomotive engineers or commission men (if they are engaged in or a part of interstate or foreign commerce) to enter into contracts with each other relating to their services or employment or compensation, than that of the legislature of a state to interfere with the contracts of such men respecting services or trade within the state. And such right of contract, as it has always existed, is beyond legislative power to destroy or lessen.

V.

The Act of Congress of July second, 1890, was not intended to interfere with the right and freedom to contract, with respect to their business or employment, of persons engaged in private business or employment, which is not affected with a public use, as such right and freedom exists at the common law. If it were so intended it would be in violation of the Constitution.

We have shown that the power of Congress under the commerce clause of the Constitution is not absolute. It will be observed that in the cases where the Act of July 2, 1890, has been applied and sustained, the business or combinations restrained were illegal and opposed to public policy under the principles of the common law, as held by the court in such decisions. Such was the *Trans-Missouri* decision, 166 U. S., 290, and the case of *United States* v. *Addyston Pipe, &c., Co.*, recently decided by the Circuit Court of Appeals for the Sixth Circuit. In the *Trans-Missouri case*, there was the controlling fact that the contract condemned was of *quasi* public corporations whose business was impressed with a public interest, and that under *common law principles* the agreement was against public policy as held in *Gibbs* v. *Baltimore Gas Co.*, 130 U. S., 308, following *Chicago Gas L. Co.* v. *People's Gas L. Co.*, 121 Ill., 530, and like cases. The contract there was not such a one as the parties were privileged to make under the right of contract secured by the Constitution.

We have shown that the guarantees and immunities which are the birthright of the American citizen, and which are protected by the provisions of and principles

underlying the constitutions of our states, from the arbitrary exercise of what is known as the police power by the legislatures of the states, are also protected against the arbitrary exercise by Congress of the power to regulate commerce. That the right of contract as it exists at the common law is as much within such guarantees and immunities as the right of private property, and stands upon the same footing. That where the business or employment, or private concerns of the private citizen, which are not affected with a public interest, are interfered with or restrained, or the freedom of contract of such citizens, with respect to their own employment or services, or private business is restrained or forbidden, an act of Congress so interfering, if valid at all, can only be sustained where it appears, by the act, that otherwise a public injury would result. Such public injury must appear; otherwise, and where the matter is not *publici juris*, Congress has no right to interfere with the personal liberty and property and the freedom of contract of the citizens, as it has existed at common law. The power of Congress with respect to commerce is to *regulate* commerce. The power to regulate does not include the power to destroy. The purpose for which this power to regulate is given is to promote trade and commerce. The language of the act of July 2, 1890, is general. And if in any case or with respect to any subject-matter of business among citizens of the United States, which the department of justice in the name of the government seeks to bring within the prohibitions of the act, it does not appear to the court that to apply the act to such subject-matter would promote commerce, it is plain that the act must be held not to apply to such subject-matter, or else the act violates the constitution. An act passed to pro-

tect trade and commerce against unlawful restraint cannot be held to intend to restrain trade and commerce or take away the freedom of trade. As we have shown, among the personal rights protected by the constitution is the right of contract. It stands on the same business and has the same sacredness as the right of private property. In *Mitchel* v. *Reynolds*, 1 P. Wms., 181, it was said that the freedom of trade was within the sanctions of *Magna Charta* for the protection of the personal rights of liberty and property. And that has been uniformly laid down in our country of the bill of rights in our constitution. In *Printing, etc., Co.* v. *Sampson*, L. R., 19 Eq. Cas., 462, 465, the court say:

> "It must not be forgotten that you are not to extend arbitrarily these rules which say any contract is void as being against public policy; because there is one thing which more than another public policy requires; it is that men of full age and competent understanding shall have the utmost liberty of contract, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider, that you are not lightly to interfere with freedom of contracts."

This has been approved by this court as applicable to the contract of parties whose business is not affected with a public interest.

Gibbs v. *Baltimore Gas Co.*, 130 U. S., 408.

U. S. v. *Freight Association*, 166 U. S., 333.

In *Railroad Co.* v. *Richmond*, 19 Wall., 590, this court says:

> "When counsel speaks for the public policy es-

tablished by the acts of Congress mentioned, he must mean nothing more than that the acts were intended to facilitate commercial intercourse among the states. Undoubtedly such was the case and it is of great public interest that such intercourse should be free and untrammeled. But if comparisons may be made with respect to a subject of this nature, *we should say that the observance of good faith between parties and the upholding of private contracts and enforcing their obligations are matters of higher moment and importance to the public welfare and far more reaching in their consequences.*"

In *Allgeyer* v. *Louisiana*, 165 U. S., 578, this court said of "liberty" as used in the fourteenth amendment (and it has the same meaning as used in the fifth amendment) that "the term is deemed to embrace the right of the citizen * * * to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

The association in question is formed by the agreement of the persons who compose it. And its rules are the mutual agreement of the members with each other. It is an exercise of the same power to associate which is exercised in unions of workmen. It confines its scope and discipline to its own members and their conduct. By its rules they agree merely as to their own conduct of their own affairs.

Plainly, the act of July 2, 1890, to be a valid act must have some limitations. Every contract between two or more persons to limit their trade is not now void. For instance, if two or more partners in business agree together to limit (restrain) their purchases in a certain commodity or line of goods in their business as merchants in interstate commerce, that contract is not void. That

is their right. If this association or its rules do not appear to be injurious to the public interest, then we submit it is clear that the act of Congress was not intended to forbid them. That the act of Congress must be construed, if it is possible, to be intended to be limited to those subjects and purposes upon which it is within the power of Congress to legislate. And that if this association and these rules would not be against public policy and interest, or would inflict no public injury, then if this act of Congress should be held to apply to them, as held by the court below, then the act extends beyond the power of Congress under the constitution. Because such right of contract is within the immunity of the bill of rights. Under this view of the case, it may be material to inquire whether this association and its rules appear to be injurious to the public and against public policy, or whether they are within the constitutional right of the parties to make. And such injury must affirmatively appear to the court.

VI.

The purposes of the Association of appellants here in question are lawful and proper.

It is plain, from reading the agreement and rules of association here in question, that this association is a beneficent one. Its main purpose, as stated in the agreement of association, is that

"of organizing and maintaining a business exchange, not for pecuniary profit or gain, nor for the transaction of business, but to promote and protect all interests connected with the buying and selling of live stock at the Kansas City Stock Yards, and to promulgate and enforce amongst the members correct and high moral principles in the transaction of business." (Print. Trans., p. 27.)

The great benefit and advantage to commerce and trade and to the public of such exchanges, and their historical growth and development in pace with the growth of trade and commerce, have been traced and shown by Mr. Krauthoff in his argument, with such thoroughness and ability that nothing is left to be said upon that point. A consideration of their relations to commerce shows that they promote commerce; and that this has been the occasion and the result of their existence. And this is emphatically true of the appellant association.

VII.

The Association of the appellants and its rules are not in restraint of trade but are in promotion of it.

The leading purpose of this association is the promotion of trade. It so states in the agreement of association. (Pr. Trans., 27.) It regulates the business conduct and integrity of its members; requires, and assures to each from every other, and to the shippers of live stock, the observance of their business obligations, by the members; the prevention of dishonorable dealing; and provides a practical means for the voluntary arbitration of disputes and the prompt hearing and disposition of such controversies. And so it makes possible the transaction by its members of the great business they carry on, and promotes and increases it. This exchange is necessary to the transaction of such business. The conduct of the immense business done at the centers, where exchanges exist, with the speed, skill, integrity, fidelity to obligations, and small expense and loss, which mark it, is only possible because of such

associations. Plainly they promote trade. What they restrain is rascality and inefficiency; they remove the barnacles which impede the progress of the ship. At the Kansas City Stock Yards, in question, during 1896, there were received 113,594 cars of live stock, or 5,471,246 head, having a value of over one hundred million dollars, all sold by word of mouth on terms of cash, but delivered to the buyer necessarily, in the transaction of such business within the time required, before payment is in fact received. This business could only be done with the skill and speed and fidelity with which it is done, because of the existence of this association, and its rules. Do they, then, restrain trade, or promote trade?

In a single respect next mentioned, they do restrain trade; and certain persons who are permitted by the government to conduct this great case on its behalf have felt this restraint. The rules of the Chicago Live Stock Exchange forbid its members, under a penalty, to sell or dispose of diseased live stock, or live stock apparently diseased, without inspection and passing by the state veterinarian. The rules of this Exchange also deal with that evil. (Pr. Trans., 54.) And these persons above referred to, who were members, having been found guilty of a violation of this rule of the Chicago Exchange, against the sale of diseased animals, appealed to the Circuit Court of Cook County, Illinois, for an injunction to restrain the enforcement by the Exchange of the fine imposed by its directors for such violation by suspension or expulsion. But the court sustained the Exchange and dismissed the bill for want of equity. (*Greer, Mills & Co.* v. *Chicago Live Stock Exchange*, Circuit Court of Cook County, Tuley, J., October, 1897, not reported.) Was the act of July 2, 1890, intended to forbid such re-

straints as that? Is it a crime, under its provisions, for commission merchants at the Kansas City or Chicago Stock Yards to agree together not to sell, for purposes of food, diseased cattle or hogs, which are articles of interstate commerce?

This hundred million dollars worth of live stock sold as stated belonged to shippers in Texas, New Mexico, Colorado and remote states and territories, as well as to some in Kansas and Missouri, and it may be bought for a person in Buffalo or Europe. The relations of the commission merchant at the Kansas City or other stock yards, who receives and sells or buys this stock to his shipper in Texas or New Mexico, or his principal wherever he is, must be one of great trust and confidence. If it is left to the absent shipper to discover and correct, dishonesty on the part of the broker is not difficult to carry out and conceal. The shipper cannot himself discover or know of acts of dishonesty in the sale or accounting for consignments, or adequately establish and enforce his rights through the courts. Hence the great occasion and usefulness to the shippers of the rules of the exchange as to the commercial conduct of the members by which any such dishonesty is discovered or prevented by the watchfulness of experienced men upon the ground. So far as the interest of shipper and buyer are concerned, does this association restrain trade, or does it promote trade?

The evil which the learned judge of the Circuit Court appears to have seen in the exchanges of the country was not that they restrain trade, but that they *promote* trade. They certainly do promote trade. The business transacted could not be done but for them and their rules, and

the observance or enforcement of such rules among the members.

But it will be said that trade is restrained by rules 9 and 16, *i. e.*, the commission rule and the rule forbidding members to deal with those who violate the rules of the exchange. These are usual rules in exchanges. We shall show later on that they are necessary in order properly so carry out and enforce the purposes and rules which promote trade, and which make possible the transaction of the business done by the members—for instance, the rules regulating the commercial conduct and observance of business contracts by the members.

But if these rules did not have that justification; if they stood by themselves; if they were made solely in the interest of the members of the exchange,—the commission rule to maintain a higher charge for the services of the members, and rule 16 for the purpose of limiting the trade of the members of the exchange in buying and selling cattle, and trading with each other,—these rules are not in restraint of trade in any proper sense. And they are, as we shall show, a proper exercise of the right of contract, and are such agreements as the members have the right to make.

In *Master Stevedores' Assn.* v. *Walsh*, 2 Daly, 1, a leading case upon the subject of the legality of associations whose rules establish a minimum rate of compensation for services of the members, the by-laws of the plaintiff association of stevedores provided for a minimum rate of compensation for its members for work, and provided that any member found guilty of working for less than those prices should forfeit to the association twenty-five per cent. of the price fixed for the work. Judge Daly said, upon the question whether this was in restraint of trade:

"This was not a by-law in restraint of trade, for it imposes no restraint upon one party which is not beneficial to the others and is not, as has been shown, prejudicial to the interests of the public."

In *Matthews* v. *Associated Press*, 136 N. Y., 333, Mr. Justice Peckham said of the by-law of a press association forbidding its members to receive and publish the dispatches of any other association covering a like territory and organized for a like purpose:

"The court must itself construe the by-law and must decide as to its tendency, while the intention with which it was passed by those voting for it is entirely immaterial upon this aspect of the case. We do not think the by-law improperly tends to restrain trade, assuming that the business of collecting and distributing news would come within the definition of a trade. The latest decisions in this country and in England show a strong tendency to very greatly circumscribe and narrow the doctrine of avoiding contracts in restraint of trade. The courts do not go to the length of saying that contracts which they now would say are in restraint of trade are, nevertheless, valid contracts, and to be enforced. They do, however, now hold many contracts not open to the objection that they are in restraint of trade which a few years back would have been avoided on that sole ground, both here and in England. The cases in this court which are the latest manifestations of the turn in the tide are cited in the opinion in this case at general term, and are *Match Co.* v. *Roeber*, 106 N. Y., 473, *Hodge* v. *Sloan*, 107 N. Y., 244, *Leslie* v. *Lorillard*, 110 N. Y., 519. So that, when we agree that a by-law which is in restraint of trade is void, we are still brought back to the question, what is a 'restraint of trade', in the modern definition of that term? The authority to make by-laws must also be limited by the scope and purpose of the association. I think this by-law is thus limited and that it is not in 'restraint of trade' as the courts now interpret that phrase."

In *Central Shade Roller Co.* v. *Cushing*, 142 Mass., 353, an agreement between a corporation and three manufacturers, giving the corporation the sole right to buy all the manufacturers might make and the sole right to sell a certain curtain fixture upon commission, the court said:

> "Does the contract impose a restraint as to the manufacture or the sale of appellants' shade rollers which is void and against public policy? The contract certainly puts no restraint upon the production of the commodity to which it relates. It puts no obligation and offers no inducement to any person to produce less than to the full extent of capacity. On the contrary, its apparent purpose is to make prices more uniform and regular, to stimulate and increase production. The contract does not restrict the sale of the commodity. * * * On the contrary, the contract intends that the parties shall make sales, and gives them full power to do so; the only restrictions being that sales not at retail, or for export, shall be in the name of the plaintiff, and reported to it, and the accounts kept by it, and the provision that when any party shall establish an agency in any city or town for the sale of a roller made exclusively for that purpose, no other party shall take orders for the same roller in the same place. To these restrictions, clearly valid, is added the one which affords an argument for the invalidity of the contract, the restriction as to price. * * * Even if such an agreement tends to raise the price of the commodity, it is one which the parties have a right to make. To hold otherwise would be to impair the right of persons to make contract, and to put a price on the products of their own industry."

In *Long* v. *Towl*, 42 Mo., 545, the court held that a contract which did not prohibit the defendant from carrying on the business at any place he might choose, but only limited the manner of carrying it on, and by fixing the prices at which he might buy and sell, and the per-

sons to whom he might sell, was not a restraint of trade according to any proper construction of the rule.

The meaning of "restraint of trade," as applicable to business which is *privati juris*, is also clearly stated in the dissenting opinion in the *Trans Missouri case* (166 U. S., 246–9), and as there stated, has been definitely set at rest in England by the House of Lords in the *Nordenfelt case*.

The act of July 2, 1890, must, as we have said, have some limitations. Not all agreements between two or more persons to limit (restrain) their trade among the states, are necessarily void. For instance, cannot two or more partners in trade, in any event agree or conclude to cut down or limit their trade in a certain commodity or line, in order to assure a profit or prevent a loss, without making themselves liable to conviction for conspiracy? Could the members of a firm in Kansas City, Missouri, by their agreement, or mutual consent, refuse to sell goods to a merchant in Topeka, Kansas? Can live stock commission merchants agree together by the rules of their association, under a penalty, that they will sell diseased animals received from another state? The words "to restrain trade" in the act in question, must have a reasonable construction. They do not mean that persons engaged in commerce among the states must trade without any restraint. If so, then the act itself is to restrain not, to promote trade.

VIII.

The Rules of the appellant association are the valid private contracts of the members.

Rules 9 and 16, as stated, are the principal point of attack. Rule 9 fixes a minimum commission charge; and to make it effective and enforceable and prevent evasions, and to prevent discriminations, the same rule regulates the employment of "solicitors" and forbids the prepayment of charges for messages. Rule 16 provides that members shall not deal with persons who violate the rules of the exchange. Have the members the right to agree on such rules? We maintain they have; because: (1.) The rules aid the carrying out the purpose of the association to promote trade; and (2.) Independent of that, they are a proper exercise of the right of contract.

And first as to the *Commission Rule*,—Rule 16.

The Commission Rule is not opposed to public policy and is the valid agreement of the members.

The evidence shows that the rate of commission by these rules is reasonable and is the usual rate which prevails at other yards. (Pr. Trans., 164–5, 182.)

It is a fact which is within our common knowledge, and is shown by this record (Print. Trans., p. 179), that it is a feature of commercial exchanges throughout the world, which are composed of brokers, to prescribe and fix a schedule of minimum commission charges, and to require observance, and to prohibit evasions thereof. For years a great part of the business of the world has been transacted in observance of such rule. Contracts have been construed and enforced with reference to it. Such

rules are regarded as evidence tending to show what is a reasonable charge. This feature and rule, as well as others, has frequently been brought to the attention of courts in adjudicated cases, and sustained, and judgments based thereon. And it has never been supposed that it was in any way in restraint of trade or opposed to the public interest or public policy. It is a feature of association to promote trade. All of this is amply shown in the argument of Mr. Krauthoff herein. It has long been taken for granted that this rule and agreement to maintain an established schedule of commissions is a proper exercise of the personal right and freedom of contract.

1. This rule tends to maintain uniformity and prevent discrimination in charges for services of commission merchants as between different shippers, and to provide a known and uniform reasonable charge on which shippers as well as commission merchants may rely.

This is not against, but is entirely in line with public policy and with the policy of Congress in its regulations of interstate commerce.

The policy of Congress, so far as it has been declared, has one marked and controlling feature, and that is uniformity of charges for like service and the prevention of discrimination. Clearly these are for the interest and good of the trade. This is the leading purpose of the Interstate Commerce Act, which is the most careful and thoroughly considered and far-reaching legislation which Congress has ever passed to regulate commerce among the states. That act is the most emphatic declaration of a policy. It remains undisturbed by the Trust Act of 1890. Now, assume that the appellants, in the conduct of their business, are instruments of interstate commerce, and that their business is commerce among the states, is

it the policy of Congress to require uniformity and forbid discrimination by a railroad company as between different shippers of live stock, and to make criminal a rule and agreement by which alone uniformity as between different shippers can be secured, and discrimination prevented in the commission charges which a commission merchant at the Kansas City stock yards shall make for selling such live stock. For it will be observed that Congress or a state legislature could not, as they could the charges of a railroad company, directly control or limit the charges which such commission merchant should make for his services, nor prevent his discriminating in such charges as between different shippers, however just and beneficial to commerce such uniformity or prevention of discrimination might be. No shipper has any legal right to the services of a commission merchant at a reasonable rate of charges as he has to the service of a railroad.

But it is plainly an advantage to the trade and to the public, if the public can be regarded as having any interest, that there should be such uniformity. But while not to be compelled so to do by law, a commission merchant may make uniform charges and refuse to discriminate. So, under his right to contract, he may agree with others to do so, and may agree to submit himself to discipline if he violates; and such agreement will be valid and for the public advantage, so far as the public has any interest. The evidence for the government in this case is that the purpose and effect of the commission rule of the appellant's exchange is to maintain a fixed *i. e.*, a uniform rate of commission charges. (Print. Trans., 155.) But that uniformity can be accomplished in an association like that of appellants, only by fixing by such agree-

ment a *minimum* charge; because the competition between the parties tends to keep the charge to such *minimum*. And as the agreement may be terminated by any member at his option by withdrawing from the association, the rate so established cannot be and remain above or more than a reasonable rate for the service under all the circumstances.

The live stock commission business has not any features of a natural monopoly, as Shiras, J., remarked of railroads in his dissenting opinion in the Trans-Missouri case in the Circuit Court of Appeals, which was approved by this court on the appeal. Every commission merchant has, in his employ, men, who can to-morrow start as his competitor, if the profits of such a business, at the rate of commissions fixed, offers larger rewards than his salary.

2. The commission rule is necessary to secure the observance and enforcement of the rule as to commercial conduct. Cutting and demoralization of rates of commission charges is likely to be precipitated by the more unscrupulous broker, whose standing and character would not be sufficient to induce shipments to him without this inducement. And when his rate of charges is below the living or reasonable rate, the temptation is great to make it up in the return of sales. As we have shown, the relation of the broker of live stock to his absent shipper is one of great trust. The broker has it in his power to practice and conceal fraud. The shipper is at a great disadvantage. The Exchange seeks to prevent this and rigidly enforce a high standard of commercial conduct. Plainly, the observance of the rule for a uniform and reasonable commission charge makes this more possible. The rule is called for on this ground.

3. Section 10 of rule 9, regulating the employment of solicitors by members of the Exchange, prevents evasions of the uniform commission rule, and the rebates and discriminations as between different shippers which would be possible, and be practiced, if there were no regulation of the employment of solicitors. If the commission rule is a necessary or reasonable one, it is reasonable that it be observed and enforced. But without section 10 the members found that evasions would occur, and gross discriminations in favor of some shippers as against others. For instance, the easy evasion of the rule against such discrimination by nominally employing certain shippers as solicitors in order really to rebate to them portions of the commissions. Section 11 of the same rule, which forbids the payment by members of messages to the shippers containing market quotations, prevents similar discriminations as between different shippers. All these rules are reasonable, and are called for in order to make the Exchange effective in promoting the trade.

Rule 16 is a reasonable rule.

4. So rule 16 which provides that no member shall do business with any person who violates the rules is reasonable, and called for. If the Exchange is to succeed in its purpose; if its discipline over the commercial conduct and fidelity of its members is to continue, then this rule is essential. If the purposes of the Exchange are themselves beneficent, then this rule is reasonable.

But aside from these reasons which call for these rules, the rules themselves are the private agreements of the members relating to their private occupation. If the purpose of the commission rule were merely to sustain the price of the services of the members, and if the other

provisions which are attacked were adopted only for the business advantage of the members, it is the right of the members to adopt them, of which they cannot be deprived. It will be observed that the rules of the Exchange are confined in their operation to the conduct of the members of the Exchange who agree thereto. There is no interference, so far as the rules of the Exchange seek to control the conduct of any person, with the conduct or business of any person who is not a member of the Exchange. There is no agreement or combination to interfere with the free action of any other person.

These appellants are engaged in an occupation which calls for their personal services. Their commission charges are made for their personal skill, fidelity and service. The commission rule is made under the same right that any man whose labor or service is engaged has to fix upon the price of such labor or service. If it had no other reason except to get more compensation for their services, then this rule and agreement is in principle the same as that which prevails in unions and organizations of workmen. Can locomotive engineers, or brakemen, or stevedores, who are engaged in the service of railroads or steamship lines in inter-state or foreign transportation and commerce, associate together and by their mutual rules and agreements agree with each other to maintain a minimum scale of wages, provided there is nothing in such rules (and there is nothing in the rules here in question) which call upon them or provide for any interference with the free action of other persons? If so, then why may not these commission men enter into such an association?

The decision of this court upon this question will determine the question of the right of men to associate to-

gether and mutually agree upon the price of their services, whether those men are brokers, locomotive engineers or others. We contend that such associations and such agreements and rules are an exercise of the right of contract; that they do no public injury; and that on the other hand they result in public benefit.

And the validity of such a rule or agreement is sustained by the strong weight of authority.

Live Stock Ass. v. *Levy*, 54 N. Y. Superior Ct. R., 32.
Palmer v. *Stevens*, 3 Pick., 188.
Master Stevedores Ass. v. *Walsh*, 2 Daly, 1.
Carew v. *Rutherford*, 106 Mass., 14.
Bowen v. *Mathieson*, 14 Allen, 491.
Snow v. *Wheeler*, 113 Mass., 179.
Commonwealth v. *Hunt*, 4 Metc., 111.
Greenhood Pub. Pol., 658.

And so of rule 16 of the exchange, which provides that no member shall do business with any person violating any of the rules, or with any one who has been expelled or suspended from the exchange.

Carew v. *Rutherford*, 106 Mass., 14.
Bowen v. *Mathieson*, 14 Allen, 499.
Snow v. *Wheeler*, 113 Mass., 179.
Commonwealth v. *Hunt*, 4 Metc., 111, 128.
Bohn Mfg. Co. v. *Hollis*, 54 Minn., 223.
Collins v. *Locke*, L. R., 4 App. Cas., 674.
Macantey v. *Tierney* (R. I.), 33 Atl. Rep., 1.
Central Shade Co. v. *Cushing*, 143 Mass., 353.
Master Stevedores' Assn. v. *Walsh*, 2 Daly, 1.

Live Stock Assn. v. *Levi*, 54 N. Y. Superior Ct. R.

Thomas v. *Musical Union*, 121 N. Y., 45.

Matthews v. *Associated Press*, 136 N. Y., 333.

Ladd v. *Southern Cotton Press Co.*, 53 Tex., 172.

Jones v. *Fell*, 5 Fla., 510.

Long v. *Towl*, 42 Mo., 545.

Brewster v. *Miller's Sons* (Ky.), 38 Lawy. Rep. Ann., 505.

The authorities here cited fully sustain the rules in question as to the proper exercise of the freedom and right of private contract.

The case of *People ex rel.* v. *Chicago Live Stock Exchg.*, 170 Ill., 556, was an application for leave to file an information in *quo warranto* against a corporation. The rules there were the by-laws of a corporation, which the court held not to be within the corporate purpose or power of the corporation. Much said in the opinion was unnecessary to the decision; and is against the great weight of authority; and certainly is inapplicable to the voluntary agreement of competent persons which is here in question, and which the parties thereto are here seeking to defend. This association and its rules, which appellee contends are condemned by the act of Congress, is an exercise of the "privilege of contracting," which is quoted by the court in the case last cited from its opinion in *Frorer* v. *People*, 141 Ill., 181, as follows:

> "The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract and acquire property in a manner which he has

> hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract. Our constitution guarantees that no person shall be deprived of life, liberty or property without due process of law. (Art. 2, Sec. 2.)"

"What one may lawfully do, two or more may lawfully agree to do jointly."

Bohn Mfg. Co. v. *Hollis*, 54 Minn., 223.

As each of the members of this Exchange may do that, which by these rules he agrees to do, his agreement here and the agreement of all, are the exercise of their constitutional right.

This association and its rules are the proper exercise of the freedom of private contract, which was among the liberties guaranteed by Magna Charta.

Mitchel v. *Reynolds*, 1 P. Wms., 181.

And which is secured by our bills of rights, in both the Federal and State constitutions.

Respectfully submitted.

JOHN S. MILLER,

for Appellants.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1897.

KANSAS CITY LIVE STOCK EXCHANGE,
sub nom. Henry Hopkins et al., *Appellants*,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

An Argument on Behalf of Appellant.

GUSTAVUS A. KOERNER,
Of Counsel.

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An Argument on Behalf of Appellant.

It appears from this record that, prior to the time that the Government filed its bill in this case, Greer, Mills & Company, a partnership firm, were engaged in the commission business in the Stock Yards of Kansas City, East St. Louis and Chicago, and that they were members of the Kansas City Live Stock Exchange, a voluntary association which had its headquarters at the Kansas City Stock Yards, and were also members of similar associations at the National Stock Yards in East St. Louis, called the St. Louis Live Stock Exchange, and in one at Chicago called the Chicago Live Stock Exchange; that Greer, Mills & Company became dissatisfied with some of the rules governing the Kansas City Live Stock Exchange, and, in violating them, broke their agreement made when they became members of said exchange, and were

disciplined according to the rules and by-laws governing the association. It appears that they were incensed at this necessary consequence of their own voluntary act in violating agreements which they had entered into of their own accord, and instituted suits to air their alleged grievances and obtain redress therefor in the State Court of Kansas, and also in the United States Circuit Court for the Western District of Missouri. As they had alleged in their pleadings, when entering those Courts, that the association of which they were members was illegal, contrary to public policy and of no binding effect upon any of its members, the Courts very properly took them at their word and dismissed them without taking cognizance of their alleged grievances. Having thus tried both State and Federal Courts it would appear that they considered themselves finally defeated, until it occurred to some ingenious mind that they could accomplish their object, which seemed to be to effect the destruction of the associations, of which they had been prominent members, by invoking the powerful aid of the National Government. They succeeded in enlisting the Attorney General of the United States, at whose instance the District Attorney for the District of Kansas presented in the Circuit Court of that District the bill which forms the foundation of this suit. The bill and answer give perhaps as complete a history of the Kansas City Live Stock Exchange as is necessary for the proper understanding of this case. The evidence was all taken in the form of *ex parte* affidavits, which are quite lengthy and numerous, yet there is but little dispute or question as to the true facts. Litigation resulted in a decree which contains no finding of

facts, except this finding: "That on the bills, affidavits and proofs submitted the application for temporary restraining order and prohibition herein should be granted."

The decree consists of three different paragraphs, enjoining the defendants as follows:

"It is therefore ordered and decreed by the Court, until the final hearing and decree on the merits and until the further order and decree of the Court, that the defendants herein, and each and every one of them, their agents, servants and employes, be and they are hereby enjoined, either as associates in the Kansas City Live Stock Exchange or otherwise, from combining, by contract, agreements or understanding, express or implied, so as by their acts, conduct or words to interfere with, hinder or impede others in shipping, trading, selling or buying live stock that is received from the states and territories at what is known as the stock yards at Kansas City, Missouri, and Kansas City, Kansas, and shipped there from other states and territories for sale there or for further transportation or for sale in or shipment to foreign markets.

And it is further ordered and decreed that the said defendants either collectively as such Kansas City Live Stock Exchange or through its Board of Directors, or otherwise, and each of them, their agents, servants or employes, be and they are hereby enjoined from enforcing or recognizing or acting under the following rules of said Kansas City Live Stock Exchange, to-wit: Rules 9 and 16, each and every section thereof, and any and all amendments thereto in respect to such live stock, and from imposing or attempting to impose any fines or penalties upon any of the members of said Kansas City Live Stock Exchange, for trading or offering to trade with any person or persons at said stock yards respecting the purchase and sale of any such live stock; or from discriminating in favor of any member of said Kansas

City Live Stock Exchange, because of such membership; and especially from in any manner discriminating against any person trading at said stock yards in such live stock, and from refusing, by united or concerted action, or by word, persuasion, threat or other means, to deal or trade with persons with respect to such live stock who are not members of said association, because of such non-membership; or in any manner from interfering with the right and freedom of any and all persons trading and desiring to trade in such live stock at said stock yards and the same as if such Kansas City Live Stock Exchange did not exist.

And it is further ordered and decreed that the defendants, and each of them, their servants, agents and employes, be and they are hereby (joined) and prohibited from entering into any contract, agreement, combination or conspiracy, fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock, shipped from one state or territory for sale or disposition in another state or territory or in foreign countries, also from entering into any contract, agreement, combination or conspiracy, limiting or attempting to limit the right of any person in business at said Kansas City Stock Yards, to employ labor or assistance in soliciting shipments of live stock from other states or territories, or the right of any such person to send telegrams prepaid or not from said stock yards to any other state or territory."

The authority for making this decree is supposed to be conferred by the statute of the United States known as the Sherman Anti-Trust Act of 1890. In the view of the writer this application of the Anti-Trust Act to the facts of this case is utterly unwarranted, and second, if it were true that, under the terms of that Act, this decree could be justified the legal conclusion would result that the Act itself is in conflict with

the fundamental principles of the American Government and with the Constitution of the United States. Let it be noted that it has been argued, on the hearing of this case below, that four different by-laws or sets of by-laws are restrictions for interstate commerce: First, the by-law which prohibits the sending of prepaid telegrams in certain cases; second, the by-law which limits the number of solicitors that may be employed by the different firms and corporations; third, the by-laws of the defendants discriminating against the products of various states and territories, as it is alleged is provided by the eighth section of Rule 9; fourth, the by-laws providing for minimum commissions to be charged by commission merchants.

It is contended that the conclusion reached by this Court in the case of the Trans-Missouri Freight Association, 166 U. S., page 290, is correctly summed up in the following sentence: "The contracts, combinations, &c., in restraint of interstate trade or commerce which are declared to be illegal by the act of July 2nd, 1890, included all contracts or combinations operating in restraint of trade or commerce, whether they be such as are held legal or illegal at common law, or whether the restraint imposed is reasonable or unreasonable." That is to say, that the law makes an offense out of an act which might be shown not to be an offense but an exercise of a wise discretion, beneficial to all interested, and debarring the defendants from all right of explanation. It is said by the Supreme Court of Illinois, in the case of *The Chicago & Alton Railroad Company v. The People on the Relation of the Railroad Commissioners*, 67 Ill., 24.

"The Legislature cannot raise a conclusive presumption of guilt against a natural person from an act that may be innocent in itself, taking from him the privilege of showing the actual innocence or proprietry of the act. Those provisions of our Constitution which forbid the deprivation of life, liberty or property, except by due process of law, and which guarantee the right of trial by jury as heretofore enjoyed, and the right in all criminal prosecutions to appear and defend a person and by counsel, would all be violated by such a law."

This decision was made in the first case which was brought under the act in force July 1st, 1871, of the Legislature of Illinois, entitled "An Act to Prevent Unjust Discriminations and Extortion in the Rates to be charged by the different Railroads in this State, etc." But the act itself went further than the title. It forbade any discrimination whatever, under any circumstances, whether just or unjust, in the charges for transporting the same classes of freight over equal distances, even though moving in opposite directions, and did not permit the companies to show that the discrimination was not unjust. The decision, while maintaining the right of the Legislature to prevent unjust discrimination to be a clear one, denies the power to prevent the defense to be set up that the discrimination was just and reasonable, under the circumstances of the case.

This decision resulted in a change of the law so as to prohibit in the future unjust discriminations instead of all discriminations.

In the case at bar it seems to be admitted that the prices fixed, as proper charges for commission in the sale of the

articles subject to the commerce of these yards, are reasonable in themselves. It must then follow, if the judgment below is to be sustained, that it is unlawful to agree to charge any commissions whatever for the service rendered, for, if the law itself goes to prohibit any charges, reasonable or unreasonable, it makes the plaintiff's case no better and no worse to show that the commissions against which they wage this war are too high or are too low. The only thing that could then be effected, if the plaintiff's contentions were to prevail, would be to prevent commissions from being uniform, and the proposition contended for seems to stand thus:—That the agreement to accept uniform, reasonable commissions for services rendered is an illegal act, under the Anti-Trust law.

> "The making of such agreement and contract was legal under the laws of the State in which the association is formed, and was legal under the laws of the United States prior to the passage of this act. If the object of the statute was to prevent unlawful restraints of trade, and it must be presumed that such was its object, the construction contended for here (as flowing necessarily from a decision of this Court in the Trans-Missouri cases), creates the greatest restraint ever put upon an enlightened people in depriving them of the freedom of trade and liberty to contract for the proper, necessary and essential protection of their own interest. Citizens living under a Republican form of constitutional government, with supposed inalienable rights and the broadest privileges of individual liberty, are placed by the Trust Act under the ban of illegality and made criminals for doing that which is lawful within their own States and in all other civillized communities."

In the decision of the Trans-Missouri cases the element of unconstitutionality is not discussed in the opinion of the majority of the Court. It was laid down in broad terms that

the statute must be read as enacted, and it seemed to be considered that it was not in the power of the Court to inject the word "unreasonable" into the prohibition of the statute against restraint of trade. However, in the case of the *United States v. E. C. Knight Company*, 156 U. S., 13, this legislation seems to be referred to as of doubtful constitutionality. Among the inalienable rights of the citizens is that of the liberty of contract. *Frisbie v. the United States*, 157 U. S. 160. It has been judicially said: "It is not necessary at this day to enter into any argument to prove that the clause of the Bill of Rights, that no person shall be deprived of life, liberty or property without due process of law, is to have a large and liberal interpretation, and that the fundamental principles of free government expressed in these words protects, not only life, liberty and property in a strict and technical sense against unlawful invasion by the government in the exertion of government power in any of its departments, but also protects every essential incident to the enjoyment of those rights.

People v. King, 110 N. Y. 418.

The liberty to adopt and follow a lawful industrial or commercial pursuit is certainly infringed upon, limited, perhaps, weakened or destroyed by such legislation as the Trust Act, which renders it criminal for individuals or corporations to pursue legitimate business methods or to make reasonable contracts for the protection of their property rights. A law in regulation of trade, which is a mere arbitrary, unreasonable and illegal interference with the liberty of citizens in the pursuit of livelihood, engaged in valid business, conducted in a perfectly proper manner, cannot be sustained.

People v. Gilson, 109 N. Y. 309;

Godcharles v. Wigeman, 113 Pa. St. Reports, 431;

Frorer v. People, 141 Ill. 171;

Ramsey v. People, 142 Ill. 380;

Harding v. People, 160 Ill. 459;

Kuhn v. Common Council of Detroit, 70 Mich. 534;

Spry Lumber Co. v. Trust Co., 77 Mich. 199.

State v. Loomis, 115 Mo. 307;

State v. Julow, 129 Mo. 163.

The principle we contend for is well stated in the last case cited:

> "We deny the power of the Legislature to do this, to brand as an offense that which the Constitution designates and declares to be a right, and, therefore, an innocent act, and therefore we hold that the statute which professes to exert such powers is nothing more nor less than a legislative judgment, and an attempt to deprive all who are included within its terms of a constitutional right without due process of law."

See also C. & A. R. R. vs. People, 67 Ill. 11, *supra*.

We take it that it can be fairly said that the concurrent authority in all cases on the subject establishes that such a statute as the Trust Act of 1890, if passed by the legislature of a State, is to be held as unconstitutional and as conflicting with the 14th Amendment of the Constitution of the United States. "If such a law would be unconstitutional because arbitrary and unreasonable, when passed by a State Legislature with reference to its internal trade, it must follow

that similar legislation on the part of Congress with reference to interstate commerce is equally void, and for substantially the same reasons."

Turning aside for a moment from a vast amount of literature on the subject in contemplation, as to what may or may not, at common law, amount to restraint of trade so as to be considered unlawful, let us consider the question presented in this case from the broadest standpoint. It may safely be said that liberty is the foundation stone of our republic. It was the desire to attain this freedom from restraint of tyrannous laws and tyrannous rulers that brought the founders of this nation to its shores. It was heralded to the world from the inception of this republic, that here was to be founded a country based upon the greatest personal liberty compatible with public safety, liberty of conscience, liberty of thought, liberty of speech, liberty of action, which certainly includes an unrestrained right to make lawful contracts. Incited by these promises this new government thus held out this country was sought as an abode by those who were smarting under the restraints of monarchical governments. Splendid results were obtained. The country has grown until it occupies the foremost rank of civilization, and its form of government and its free institutions have always been and are held out as models for those striving to attain the blessings of liberty without leaving their native shores. No one would suppose for a moment that the American people would tolerate any legislation looking to the abridgment of the liberty of conscience, of the right to worship God as the individual chooses, or to abstain from any recognized form of divine worship. Is not liberty of action, liberty to contract, as sacred, and is it not as

important that that should be upheld as the abstract liberty of conscience?

The functions of government in this model free country should be limited to its protection from enemies abroad, and to the prevention of crimes at home, and to laws securing safety to persons and property of the citizen. The greatest danger to free institutions is to be apprehended from what may be called paternalism. That is to say, the interference by legislative action with the personal and private doings of the citizen. To my mind it appears perfectly clear that any such legislation is directly against the promises held out by the Declaration of Independence, which declared that "life, liberty and the pursuit of happiness" were among the inalienable rights of man, and directly opposed to the positive declarations of the Constitution of the United States.

Does it not appear almost like trifling to invoke the power of the government to prevent a number of people from agreeing upon a reasonable compensation to be paid for lawful services rendered in a lawful business? Is it not almost remindful of the opera bouffe to ask the government of the United States to declare that an agreement among a number of persons not to prepay telegragh messages, that they might be called upon to send, to be an unlawful invasion of a statute of the United States; or a by-law or rule, by which a number of persons agree that they will employ but a limited number of solicitors, whose business is to ask for trade for their employers? I cannot help being of the opinion that it is a lowering of the dignity of the government to lend the aid of its Law Department to such purposes.

That the invasion of the liberty to contract about lawful matters is an invasion of a property right has been abundantly shown in the briefs filed in this case, and strengthens materially what I conceive to be the incontestable proposition that this legislation, if it is to be construed as a prohibition to make lawful contracts and reasonable contracts in relation to trade or commerce, or even in partial restraint of trade, is in conflict with the fundamental principles of our government. It is difficult to see, and has not thus far been pointed out with any degree of perspicacity, how these rules and by-laws complained of do act or could act in restraint of trade. It does appear by the evidence that the association attacked in the bill filed by the Attorney General has been in existence in Kansas City for more than ten years, and it appears by the evidence that during this time the business done at the Kansas City stock yards has increased to almost double its proportion; and during its existence the Kansas City stock yards, where this association has its situs, became one of the largest markets for live stock in the world, second to but one in the United States, which means second to but one in the world. During all this time these rules, by-laws and regulations were in force. Does that look as if they operated in restraint of trade? During very much of this time the parties instituting this litigation were active and influential members of this Exchange, acknowledged its benefits until, coming in conflict with one of its rules, they undertook its destruction. Failing to succeed by private litigation they have had sufficient power to invoke the aid of the government to their purpose.

Furthermore, it is by no means born out by the record that only those belonging to this Exchange could do or did do

business as commission merchants in the yards, but every one is free to go there and do the same class of business as the members of this Exchange are engaged in. It is true that the members of the Exchange have determined that they will not trade with such men as have violated their obligations to the Exchange, but this restriction does not apply to such as have never become members of the Exchange. Again, every owner of stock or shipper of stock can appear at the market, within these stock yards, and offer his goods for sale and sell them to the best advantage he may, without the intercession of an intermediary commission merchant. Thus trade is not restrained, but, on the contrary, everything is done by the members of this Exchange individually to increase the volume of business, and to attract cattle, sheep and hogs, which form the articles of commerce they deal in, from all parts of the country from which it is practicable to reach the Kansas City stock yards.

And again. The members of the Exchange are engaged in active competition amongst themselves, and is it not better for the sellers and buyers at a market, where a business of such magnitude is transacted, that there should be some understanding among reputable dealers and reputable commission merchants as to the commission to be charged for handling these goods? Every one bringing stock to that market knows precisely at what figures he may obtain the services of a reputable dealer. He knows also that he may be able at a cheaper rate to obtain one who is not a member of this association, but is not such a person better protected and has he not more security for fair dealing and honest treatment when he knows the established prices than if, before making his trade, he is compelled to go about haggling with numbers of

applicants for his trade who are willing to cut under an established and reasonable rate? Does not the very fact that this immense volume of trade is done in the Kansas City stock yards, prove beyond question that the methods of business in those yards commend themselves to those who have stock for sale?

There are over three hundred members of this association. If the minimum prices fixed for handling stock were unreasonably high, their own interest to hold the trade and not have it diverted to other markets would quickly operate as an incentive to reduce them to reasonable proportions.

It is said in a brief filed by complainants' counsel in the Court below, that prior to the institution of the Exchange, while prices charged by commission men were nominally the same as now, yet in many instances commission men could be secured to act for less compensation. This may be true, and is true now, but experience has shown that the formation of this association has caused stability in the prices and security to the dealers.

It is but fair to draw attention to other rules of the Exchange, so that the Court may be informed of its purposes and its doings beyond those shown by the by-laws criticized. For instance Section 6 of Rule IV provides for the action of the Exchange, "When any member of the Exchange has failed to comply promptly with the terms of any business contract or obligation, and has failed to equitably and satisfactorily adjust and settle the same," &c. Thus the Exchange, while giving the customers of its members to understand on the one hand that they will be charged a uniform and fair commission for the services of a member of the Exchange, the entire body

will see to it that any dealings he may have shall be equitably and satisfactorily carried on, and thus give the guaranty of the entire body fair treatment of its customers.

Is this rule also in "restraint of trade?" or is it not greatly in furtherance of trade at this point? The latter is undoubtedly true.

From these considerations it appears that we are relieved in the case at bar from the necessity of discussing the question or indulging in speculation as to whether the acts in question would or could or might be in restraint of trade. Experience of many years has furnished proof most convincing that the trade which is affected thereby, if it is affected at all, is stimulated and increased. This should be sufficient answer to the complaint of the United States.

In line with this thought an examination of the adjudicated cases on the subject discloses that in all of them it was found by the Court as a fact that the particular combination in question either had proved itself to be or its probable effect would be to restrain trade by an ability to control prices.

I take it that all such combinations as have been condemned controlled capital of such proportions as to create monopoly, or had the power of destroying the opportunity of buyers and sellers to deal with each other upon the basis of fair, open and free competition. Combinations of this character are said to have a tendency to restrain trade.

No such tendency can be found in this case where experience can be invoked instead of expectation.

Thus in the Morris Run coal case, 68 Penn. Stat. 173, &c.,

the important fact condemning the contract was that the companies control an immense coal field, which was the great source of supply of bituminous coal to the State of New York, and large territories westward, and that by the contract they controlled the price of coal in this extensive market, and could affect all within the territory who use coal as fuel.

In the case of *Central Ohio Salt Co. v. Guthrie*, 35 Ohio St., 666, it was said, "*The clear tendency* of such an agreement (as there found to exist) is to establish a monopoly and to destroy campetition in trade."

In *Craft v. McConaughy*, 77 Ill. 346, it is said: "*The effect* of the contract was to restrain the trade and commerce of the country."

In the case of *India Bagging Association v. Koch*, 14 La. Ann. 168, the "agreement between the parties was palpably and unequivocally in restraint of trade, and to enhance the price in the market of an article of prime necessity to cotton planters."

In *Santa Clara Milling Co. v. Hayes*, 76 Cal. 387, the Court found that the object, purpose and consideration of the contracts there in question, was to form a combination among all the manufacturers of lumber at or near a particular place for the *sole purpose* of increasing the price of that article."

Mr. Chief Justice Sherwood, of the Supreme Court of Michigan, said in the case of *Richardson v. Buhl*, 77 Mich. 632, &c.

> "The *sole object* of the corporation is to make money by having it in its power to raise the price of the articles, or diminish the quantity to be made and used at its pleasure."

This reference to decided cases, which have mostly, if not all, been brought to the attention of this Court in other briefs filed herein, is made for the purpose of showing in this connection that the Court has always found that there has been harm done, or that it lay in the power of those controlling the combinations or contracts to injuriously affect trade or commerce.

In this case the evidence fails to show that the effect of the rules of the Exchange have been vicious, or in any way obstructive to the trade in live stock; it fails to show that it is in the power of the Exchange to restrain the trade, or that were it in its power there is any reasonable ground to fear that it might be so exercised

It is respectfully submitted that the case here presented is not within either the letter nor the spirit of the act of July 2, 1890. That Congress did not intend to interfere to the extent claimed with the right of private contract; that an attempt to do so would be violative of constitutional restrictions. That this proceeding merits condemnation, as being an effort to use the mighty power of the government to obtain private ends.

GUSTAVUS A. KOERNER,

Of Counsel.

No. 593. 210.

JAMES H. McKENNEY,
CLERK

Add'l Brf. of Krauthoff for Appts.

IN THE

Supreme Court of the United States.

Filed Mar. 2, 1898.

HENRY HOPKINS ET AL., APPELLANTS,

vs.

UNITED STATES.

ADDITIONAL SUGGESTIONS OF FACT BY APPELLANTS.

Since the close of the argument the attention of counsel for appellants has been called to an oral statement by counsel for the Government that, prior to the organization of this Exchange, 90 per cent. of the commission merchants had granted rebates.

There is no such proof. Mr. Moore was probably misled by the allegation of the bill that 90 per cent. of these merchants make loans to feeders.

The great effort to make a showing in this respect (induced by the exigencies of the case, but not charged in the bill, and urged first by way of rebuttal affidavits) shows it to be in the nature of an afterthought.

This exchange was formed *after* similar bodies had been established at Chicago and East St. Louis. The schedules

there prevailing were adopted, thus fixing the rates on the basis of the then *best* market, having the highest facilities. These were and are still *competitors*, as noted in Texas, &c., R'y Co. *vs.* Interstate Com. Com., 162 U. S.

It is impossible to believe—

a. That every interest would have concurred if wrong were being done or extortions practiced. On the contrary, this universality of action proves a then existing evil and a demand for its correction.

b. That this schedule should have been permitted to prevail for *ten years* without challenge on the score of propriety.

c. That if wrong was being done it should not have been charged in Greer *vs.* Payne and Greer *vs.* Stoller, cited in the brief, in neither of which any such point was made.

d. That the market should have grown to such an extraordinary extent if there were wrong in this respect.

e. The universality of concurrence in the reasonableness and propriety of the schedule is proof conclusive as to its fairness and beneficial effect.

It is not denied by the Government that the rates are reasonable, nor that it costs from 50 to 70 per cent. of the rates to defray the actual expenses of conducting the occupation.

The point is that rebates, favoritism, and discrimination should be reinstated, contrary to the conclusions of those best qualified to judge and most deeply interested in protecting the market.

Rebates to such an extent that the compensation is less than the cost of rendering the service means either inferior service or a recoupment in some underhanded way. Either will kill a market, and both are injurious to commerce.

L. C. KRAUTHOFF,
Of Counsel for Appellants.

No. 533.

Brief of Atty. Gen. (Richards & Moore) for Appellee

Filed Feb. 23, 1898.

FILED
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

HENRY HOPKINS ET AL.
v.
THE UNITED STATES. } No. 533.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

HENRY HOPKINS ET AL.
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This proceeding was instituted, under the direction of the Attorney-General, in accordance with the provisions of section 4 of the antitrust act of July 2, 1890.

Omitting formal averments, the bill charges:

> (THE DEFENDANTS:) That the defendants are members of a voluntary unincorporated association known and designated as the Kansas City Live Stock Exchange, and that they have adopted so-called articles of association and rules and by-laws

whereby they have agreed one with the other that they will faithfully observe and be bound by the same and by such new rules and such additions and amendments thereto as may from time to time be adopted by the association; that the government of said association is vested in a board of eleven directors, and that the business of said exchange is carried on and conducted by said board of directors with the knowledge and consent of the defendants as such members, at the Kansas City stock yards, which is situated in the city of Kansas City, in the State of Missouri, and in the city of Kansas City, in the State of Kansas, and in a building owned by the Kansas City Stock Yards Company, said building being so located that one-half of it is in the State of Missouri and the other one-half thereof in the State of Kansas; that about one-half in number of said defendants have offices and transact business in said stock yards and in said building within the State of Kansas, and the other one-half of said defendants have offices and transact business at said stock yards in the State of Missouri.

(THE STOCK YARDS COMPANY:) That the Kansas City Stock Yards Company owns and controls what is known as the Kansas City stock yards, which are located on both sides of the State line, between Kansas and Missouri, and consisting of yards, pens, chutes, railway tracks, sheds and weighing scales, buildings, and other means and appliances for receiving, yarding, feeding, and shipping cattle, hogs, and other live stock; that said building contains a large number of rooms and offices for the accommodation of the officers of said stock yards company, which are leased to members of said exchange, numbering altogether about three hundred persons.

(METHODS OF BUSINESS:) That substantially all the business transacted in the matter of receiving, buying, selling, and handling cattle and other live stock at said Kansas City is carried on by defendants herein and the other members of said exchange as commission merchants at said Kansas City stock yards, and that a large proportion of said live stock, consisting of cattle, hogs, and sheep, bought, sold, and handled at said stock yards by said defendants and their fellow-members in said exchange are shipped from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, and Arkansas, and the Territories of Oklahoma, Arizona, and New Mexico; that when said stock is received at said stock yards it is sold by the defendants aforesaid and their associate members of said exchange to the various packing houses situated in Kansas City, Mo., and Kansas City, Kans., and is also sold for shipment to various other markets, and particularly for shipment to the Chicago, St. Louis, and New York markets; that a vast number of cattle, hogs, and other live stock is thus received annually at said stock yards, and so sold and handled by the members of said Kansas City Live Stock Exchange, and that said Kansas City stock market is a public market, and supplies a large number of packing houses located at and near Kansas City, Mo., and Kansas City, Kans., and other points in different States of the Union; that said Kansas City market, next to Chicago, is the largest live stock market in the world; that under the custom and practice which has for many years prevailed, and is now in vogue, at said Kansas City stock yards the live stock received at said stock yards upon its arrival there is delivered to commission merchants who are members of said Kansas City Live Stock Exchange, who receive, handle,

sell, or reship the same for the consignors and owners thereof to other States and Territories, charging therefor a commission for their services in that respect; that in the course of business at said stock yards, and in such buying, selling, handling, and reshipment of cattle, hogs, and sheep, at said Kansas City market, said stock is moved and shifted from that part of said stock yards situated in the State of Kansas to that part of said stock yards located in the State of Missouri and vice versa, according to the convenience of said Kansas City Stock Yards Company; that in the reshipment of stock from said stock yards a portion are shipped from the State of Kansas and a portion from the State of Missouri, the loading pens and chutes of said corporation being, as before alleged, situated in both said States and contiguous to each other.

(MORTGAGES:) That a large proportion of the live stock handled, sold, and reshipped at said Kansas City stock yards by the defendants and other members of said Kansas City Live Stock Exchange are encumbered by mortgages thereon executed by the owners thereof in the various States and Territories aforesaid where said live stock is raised and fed; that said mortgages are made to the defendants and the other members of said Kansas City Live Stock Exchange doing business at said stock yards, and that it is the practice and custom of the defendants and their associates to advance large sums of money to stock growers and owners of cattle in the States and Territories aforesaid, so that the owners of live stock may have the means to feed and prepare them for market; that when said live stock so mortgaged are ready for shipment they are consigned to the defendants and other members of said Live Stock Exchange who have, as aforesaid, made advancements thereon, and on the sale of said stock

the amount of said advancements and interest is deducted from the proceeds of the sale of said cattle by the commission merchants having a lien thereon by mortgage as aforesaid; that 90 per cent of the members of said Live Stock Exchange make such advancements of money on live stock, and the large and growing market for live stock at Kansas City is largely sustained by means of the money so advanced to the cattle raisers by the defendants herein and their associates.

(ONLY AVAILABLE MARKET:) That said stock yards at Kansas City afford to owners, shippers, and dealers in live stock the only available means at that place for handling, selling, and reshipping live stock, and the only available place for those purposes within 200 miles to the north, south, and east of Kansas City, and for 2,000 miles to the west thereof; that by reason thereof said Kansas City stock yards is the only available public market for the purchase and sale of live stock for an exceedingly large territory located in the States and Territories of the United States hereinbefore named, and the only available means for the exchange of interstate traffic in said live stock between the States and Territories aforesaid; that it is, and for several years has been, the daily custom and practice of said defendants and their associates in the conduct of their commission business, to sell live stock in the State of Missouri, which is at the time located at said stock yards in pens in the State of Kansas, and to sell live stock in the State of Kansas which is at the time located at said stock yards in pens in the State of Missouri, and deliveries of said live stock are made on such sales from the State of Kansas to purchasers in the State of Missouri, and deliveries of said live stock are also daily made on such sales from the State of Missouri to purchasers in

the State of Kansas; that all of the commission merchants engaged in the business of buying, selling, and reshipping live stock at said Kansas City market are members of said Kansas City Live Stock Exchange.

(ADVANCEMENTS ON SHIPMENTS:) That it now is, and for several years has been, the custom and practice among a large number of cattle growers and shippers in different States and Territories of the United States, who consign live stock to the Kansas City stock yards for sale, to draw drafts for various amounts on the commission merchants to whom said live stock is consigned, and attaching the bill of lading issued by the carrier therefor, to draw money on said drafts from the local banks throughout the Western States and Territories aforesaid, and when said drafts are presented to the consignees, the commission men aforesaid, at Kansas City, the same are paid by them in the States of Missouri and Kansas, and the proceeds thereof remitted by the collecting banks to the banks located in the various towns and cities from which said live stock was shipped, and who have advanced money on the drafts aforesaid; that by reason of the business at said stock yards being transacted on both sides of the State line between Kansas and Missouri, and by reason of the fact that live stock received, bought, sold, and reshipped at said stock yards are transported from one State to another State of the Union, and in the course of being so received, sold, delivered, and reshipped at the stock yards, are at times in Kansas and at others in Missouri, the said business is interstate in character, and the legislation of the States of Missouri and Kansas is inapplicable thereto, and such business can only be regulated and controlled by Federal legislation, because it is a part of the commerce between the States.

(CONSIGNMENTS HANDLED EXCLUSIVELY BY DEFENDANTS:) That said Kansas City stock market is patronized to a large extent by buyers of live stock who ship their purchases made at said Kansas City stock yards from the States of Kansas and Missouri to States east thereof, and for export to foreign countries, and that such purchasers of live stock at said stock yards have resident agents who make purchases of live stock through the defendants and other members of said Kansas City Live Stock Exchange, and said live stock when so purchased is loaded into railroad cars and carried to Chicago, St. Louis, New York, and other Eastern markets; that large shipments of live stock are made as aforesaid from the States of Missouri, Kansas, Texas, Iowa, Arkansas, Colorado, and the Territories of Oklahoma, Arizona, and New Mexico to said Kansas City stock yards for the purpose of having said live stock sold and the proceeds returned to the owners thereof in the States and Territories aforesaid; that if the person or partnership or corporation to whom said live stock is consigned at Kansas City aforesaid is not a member of said Kansas City Live Stock Exchange and a subscriber to its rules and by-laws, then said consignee is not permitted and can not sell or dispose of said live stock at the Kansas City market, for the reason that the defendants and all the other commission merchants doing and controlling the business at said stock yards, as required by the rules of said exchange, refuse to buy live stock or in any manner negotiate or deal with or buy from a person or commission merchant who is not a member of said Kansas City Live Stock Exchange; that in all such cases the owner of live stock shipped to the Kansas City market is compelled to reship the same to some other market, and by the unlawful combination existing among the defendants and the

other members of said Kansas City Live Stock Exchange is prevented from delivering such live stock to the Kansas City stock yards, and the sale of said live stock is thereby hindered and delayed, thus entailing extra expense and loss to the shipper, and placing an obstruction and embargo on the marketing of all live stock shipped from the States and Territories aforesaid to the Kansas City market which is not consigned to the Kansas City Stock Yards Company, or to the defendants, or other members of said Kansas City Live Stock Exchange.

(RULES:) That the defendants and the other members of said Kansas City Live Stock Exchange have adopted and are governed by certain articles of association, rules and by-laws, which have been subscribed to by each of the above-named defendants, many of which said rules and by-laws are in restraint of trade and commerce between the States, and intended to create a monopoly in contravention of the laws of the United States in that behalf; that Rule IX, adopted by said defendants and their associates in said Live Stock Exchange and now in force as one of its by-laws or rules, provides as follows:

"RULE IX.—*Commission.*

"SECTION 1. The commissions charged by members of this association for selling live stock shall not be less than the following-named rates:

"SEC. 2. Six dollars per carload for single-deck carloads of hogs or sheep and ten dollars per carload for double-deck carloads of the same: *Provided*, Members of this exchange may, after charging commission as above provided, pay a regular sheep salesman on these yards a sum of money contingent on number of sheep sold; said sheep salesman may be in the employ of other members of the exchange.

"SEC. 3. Fifty cents per head for cattle of all ages. In carloads of twenty-four or more not more than twelve dollars per carload; ten dollars per single-deck carload and eighteen dollars per double-deck carload of veal calves.

"SEC. 4. Fifty cents per head for cattle and twenty-five cents per head for calves and ten cents per head for hogs and sheep in mixed carloads, but not to exceed twelve dollars per carload. Fifty cents per head for cattle and twenty-five cents per head for calves driven into the yards, and ten cents per head for hogs and sheep for sixty head or less; more than that number shall be charged for at carload rates.

"SEC. 5. Fifty cents per head for buying cattle for stockers or feeders: *Provided*, Such charges shall not exceed twelve dollars per carload; six dollars per single-deck carload for buying sheep, and ten dollars per double-deck carload. All purchases paid for by a commission house or shipping clearance made by same shall be deemed a purchase and charged for as above provided.

"SEC. 6. Not less than four dollars per single-deck and five dollars per double-deck carload for buying live hogs, and not less than three cents per head for hogs bought by the head.

"SEC. 7. No member or commission firm or corporation represented herein shall do business for a yard trader or speculator on this market for less charges than one-half the regular commission.

"SEC. 8. Firms or corporations represented in this exchange may handle the business of nonresident commission firms or corporations, when the stock is consigned direct to or from said nonresident commission firm or corporation, at half the rates fixed by this rule. Provided, said nonresident commission firms or corporations are established

on one or more of the following markets, to wit: Chicago, Ill.; East St. Louis, Mo.; Denver, Col.; and Pueblo, Col.

"SEC. 9. No member of this exchange or firm or corporation represented herein shall cause or allow to be shipped in his or its name any kind of live stock for the purpose of violating any of the provisions of this rule.

"SEC. 10. No agent, solicitor, or employee shall be hired except upon a stipulated salary, not contingent upon commissions earned (save as provided in section 2 of this rule). No solicitor shall be employed except as a bona fide traveling agent, who shall not solicit consignments local to his own neighborhood only nor to secure his individual trade. Nor shall any agent, solicitor, or employee be hired who is employed by any other party or parties, or who is actively engaged in other business (save as provided in section 2 of this rule). Members of this exchange must file with the secretary within five days of employment the names and addresses of their solicitors. More than three solicitors shall not be employed at one time by a commission firm or corporation. Members of a commission firm or corporation—resident or nonresident of Kansas City—may travel as solicitors, but must be registered as one of the three allowed each firm or corporation. It shall be a violation of this rule for any solicitor representing or claiming to represent a commission firm or corporation in any other market to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

"SEC. 11. Any member of this association, or firm or corporation represented herein, sending or

causing to be sent a prepaid telegram or telephone message quoting the market, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine is not paid within three days said firm or member shall be suspended until said fine is paid: *Provided, however,* That prepaid messages may be sent to shippers quoting actual sales of their stock on the day made; also to parties desiring to make purchases on this market.

"SEC. 12. Any member of this exchange, or firm or corporation in which he may be a partner, violating any of the provisions of this rule, shall be fined not less than $500 nor more than $1,000 for the first offense; if said fine be not paid within three days said member or firm may be suspended from membership until same is paid. For a second offense said member or firm may be expelled from membership in the exchange.

"SEC. 13. From such fines and special assessments the exchange shall pay a reward of $500 to any party or parties furnishing sufficient evidence to convict any member of a violation of any of the provisions of this rule, and said reward shall be paid immediately after conviction.

"SEC. 14. For the purpose of making effective section 12 of this rule, when the treasurer shall not have on hand, from fines collected, the sum of $500, the directors shall levy a special assessment, pro rata, on each commission firm or corporation buying or selling live stock in this market who is a member of the exchange, and they shall continue to levy such special assessments in such amounts as will keep a fund of $500 constantly on hand for this purpose. Said fund shall be kept as a special fund and shall be used for no other purpose.

"SEC. 15. Each firm or corporation represented in this exchange shall be held responsible for any violation of this rule by any party doing any portion of a commission business in its name, and any penalty imposed for violation of the foregoing shall be on account of such party; if not paid within three days the firm or corporation doing said business shall sever its business connections with such party within ten days. No firm or corporation shall thereafter do any business for such party until said fine is paid."

That all of said defendants have agreed to be bound by and conform to the provisions of said Rule IX, as above set forth, and that the board of directors of said Kansas City Live Stock Exchange have within three months last past suspended members thereof for a violation of the provisions of said rule, and the board of directors of said Kansas City Live Stock Exchange have from time to time exercised jurisdiction over complaints made against members of said exchange for violation of different sections of said rule. That Rule XVI of said Kansas City Live Stock Exchange now in force, and adopted and subscribed to by said defendants, provides as follows:

"RULE XVI.—*Limitations.*

"SECTION 1. No member of the Kansas City Live Stock Exchange shall transact any business with any person violating any of the rules or regulations of this exchange, or an expelled or suspended member, after notice of such violation, suspension, or expulsion has been issued by the secretary or board of directors of the exchange."

(MONOPOLY AND RESTRAINT OF TRADE:) That the defendants have by the adoption of said articles of association, rules, and by-laws, and by associating themselves together in said association known

as the Kansas City Live Stock Exchange, and in carrying out said articles, rules, and by-laws, and by the conduct of business aforesaid as the Kansas City stock yards, conspired and confederated together in violation of the laws of the United States, and particularly in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in the prosecution of said unlawful combination have agreed and confederated to monopolize the business of buying and selling live stock at said Kansas City market, and to illegally fix and establish a minimum price for buying and selling the same, and have further, in restraint of trade and commerce between the States, confederated together to prevent and restrain the free transmission of information regarding the state of the market of said Kansas City by telegraphic messages and information to the various States and Territories aforesaid, and by the adoption and enforcement of said Rule IX have restricted the free employment of agents and solicitors in the prosecution of the business in which said defendants are engaged as live stock commission merchants, said business being carried on as aforesaid at the Kansas City stock yards.

That the purpose of the defendants and their associates in organizing the Kansas City Live Stock Exchange, and in adopting and enforcing the rules and by-laws aforesaid, was and is to prevent the shipment and consignment of any live stock to the Kansas City market, unless said stock is shipped and consigned to the Kansas City stock yards, and to the defendants or other members of the Kansas City Live Stock Exchange, and that the further purpose of said defendants and their associates in organizing said association and in so preventing the shipment and consignment of live stock to persons other than

themselves was, to compel shippers of live stock from each of said Western States and Territories to pay to defendants and their associates the commissions and charges provided for in said Rule IX, and to prevent all shippers of live stock from said Western States and Territories from placing their property on sale at the Kansas City market, unless such commissions so provided for in said Rule IX were paid to the defendants or their associates in said unlawful combination.

That it was also the purpose of said defendants and their associates, by the means aforesaid, to monopolize the business of receiving, handling, selling, buying, and reshipping all live stock received at the Kansas City market, and all live stock received in said Western States and Territories and shipped to said Kansas City, and also to prevent the sale at said Kansas City market by any person not a member of said Kansas City Live Stock Exchange of any live stock whatever from the States and Territories aforesaid, and to prevent any person other than themselves from acting as commission merchants in and about the sale of live stock at the Kansas City market, and to obstruct and retard the owners of live stock in the States and Territories aforesaid in the sale and disposition of their property in the market at said Kansas City and in the other markets hereinbefore named to which cattle are reshipped or forwarded from said Kansas City stock yards.

The bill concludes with a prayer for a decree dissolving the said Kansas City Live Stock Exchange, and prays—

That said defendants, and each of them, be provisionally and permanently enjoined and prohibited from entering into, or continuing in any sort of com-

bination, contract, agreement, or confederation to deprive the people engaged in shipping, selling, buying, and handling live stock received from the States and Territories aforesaid and intended to be sold to the packing houses at Kansas City, Kans., and Kansas City, Mo., or to other States or Territories, or to foreign countries, from enjoying free access to the market at Kansas City, and to the facilities afforded by the Kansas City stock yards, on the payment of the same rate and charges at said stock yards as are now paid by the defendants and their associate members of said Kansas City Live Stock Exchange.

That said defendants, their servants, agents, etc., be provisionally and perpetually enjoined and restrained from enforcing or acting pursuant to said Rule IX of said Kansas City Live Stock Exchange, or yielding obedience thereto; also from imposing or attempting to impose any of the fines or penalties provided for in said rule; also from discriminating in any manner against any person who is not a member of said Kansas City Live Stock Exchange solely because of such nonmembership; also from refusing, by united or concerted action, to deal or trade with persons who are not members of said Kansas City Live Stock Exchange solely because of such nonmembership; also from entering into any contract, combination, or conspiracy, fixing or tending to fix, directly or indirectly, the price to be charged as commission for buying or selling live stock shipped from one State or Territory for sale or disposition in another State or Territory; also from entering into any contract, combination, or conspiracy limiting, or attempting to limit, the right of any person in business at said Kansas City stock yards to employ labor or assistance, or the right of any such person to send telegrams, prepaid or not, from said stock yards to any other State or Territory.

The answer of the defendants is set forth at length in appellants' brief, at page 8.

A general replication was filed.

The case came on for hearing on application for a temporary injunction upon the pleadings and affidavits of the respective parties.

An outline of the evidence disclosed by the affidavits will be given.

The membership of the exchange companies is made up of *commission merchants* and *packers* (Rec., 154), and numbers about 300 (Rec., 199); the cost of admission has been increased from time to time and is now fixed at $2,500 (Rec., 199).

The pens and yards at the Kansas City market are owned by the Kansas City Stock Yards Company, a corporation in no way connected with the voluntary association known as the Kansas City Live Stock Exchange, except that the stock yards company owns the building in which the commission men have offices, and the commission men are tenants of the stock yards company. The pens and yards of the stock yards company are situated on both sides of the State line between Kansas and Missouri, the line running through the center of the building, dividing it about the middle, and also dividing the pens about equally. (Rec., 148.)

The stock shipped from the West is nearly all unloaded in the State of Kansas at chutes and platforms provided by the railway companies, but a portion of the stock received at the stock yards is unloaded in the State of Missouri. When loaded and shipped out the shipping

is done both in Kansas and Missouri, part of the terminals at the stock yards being in one State and part in the other. (Rec., 149.)

The area of country for which Kansas City is a natural market for live stock is very large and embraces Kansas, Missouri, Arkansas, Indian Territory, Oklahoma, Texas, New Mexico, California, Colorado, Utah, Wyoming, Montana, both Dakotas, Nebraska, Iowa, and others. (Rec., 149.)

In shipping cattle from the country to the Kansas City market it is customary to arrange for what is called through billing with the railroads; that is, if a man ships cattle from Texas to Kansas City he may want to test the market there, and have the right, if the market is not satisfactory, to continue the shipment on as far as Chicago or St. Louis. To do this they arrange for through billing to Chicago or St. Louis, as the case may be, at a through rate. (Rec., 149.)

It is customary for members of the Stock Yards Exchange to make loans to stock raisers and dealers to the aggregate amount of many hundred thousand dollars. A profit is made by the commission man in so making advances to the stock raisers, which consists, first, in the commission derived from the sale of the cattle when shipped to the market, and second, a profit made on the discount of the paper. The notes given to evidence such loans are secured by chattel mortgages and known as "cattle paper," and generally draw 10 per cent interest, and this paper is generally discounted at the various banks at from 5½ to 8 per cent. Probably one-half of

the cattle shipped to and sold at the Kansas City market is encumbered in this method. When money is thus loaned it is the custom to make an agreement to the effect that when the cattle are ready for market the owner will ship the same to the commission man advancing the money and allow a commission for the sale and handling of the same. (Rec., 148, 156, 208.)

The loans thus made by commission men on cattle are made in all the States and Territories above named. In shipping cattle to the Kansas City market the shipments are almost always to some commission house or firm, who look after the arrival, unloading, and care of the cattle after they arrive. (Rec., 149.)

It is also the custom and practice among a large number of cattle growers and shippers residing in the various States and Territories above named to consign cattle to commission men at the Kansas City stock yards, members of the association, for sale, and to draw drafts for various amounts on the commission merchants to whom the same are consigned, and to attach the bills of lading issued by the railroad or carrier thereof for such interstate transit, and to draw money on the same from the local banks in such State or Territory from which the original shipment is made, which drafts are presented to the consignee or commission men at Kansas City, and paid by such commission men in both States of Missouri and Kansas; the proceeds of which drafts are remitted by the collecting bank in Kansas City to the banks located in various towns and cities in the Western States where the shipments originate. (Rec., 151, 156, 207.)

The packing houses or corporations that slaughter cattle and hogs at this market purchase a large per cent of the cattle and nearly all of the hogs that are shipped to the Kansas City market. The packing houses are nearly all incorporated, and their relation to the exchange is through certain members interested in or employees of the packing companies who are members of the exchange. (Rec., 154.)

The volume of business carried on at the stock yards requires the constant use of the telegraph wires and they are largely used by the commission men and stock raisers and dealers in the carrying on of the business at the stock yards. The Western Union Telegraph Company and the Postal Telegraph Company, the companies which control all the telegraph wires that can be reached at Kansas City, have offices in the Stock Exchange Building, and have employed a large number of employees and operatives there. Messages are daily sent and received by the commission men doing business at the stock yards, to and from the various States and Territories in the United States. It is essential that the patrons of the Kansas City market, who raise stock in the States and Territories tributary thereto, should be acquainted almost daily with the state of the market in order that they may have knowledge of the same and information when to ship, and to know the condition of the market. (Rec., 147.)

There is also an association known as the Traders Exchange, composed of speculators and traders who buy live stock of commission men, members of the defendant

exchange, and sell to commission merchants who are members of the defendant exchange. The commission merchants in buying or selling to the speculators, handle the stock so sold or purchased for others who pay them a commission for the services rendered. (Rec., 187.)

With the single exception of the firm of Greer, Mills & Co., who are temporarily protected by an order of court, no person or company is engaged in the business of handling live stock on commission at the Kansas City stock yards, except members of the exchange. The purpose of the association is and has been to prevent anyone except their own members from doing any such business there. When a new arrival undertakes to engage in the commission business at the stock yards, he is promptly served with a notice similar to the following:

KANSAS CITY, *June 4, 1895.*

Mr. P. H. HARRIS, *City.*

DEAR SIR: I am instructed by the directors of the Kansas City Live Stock Exchange to request that you take out a membership in this exchange forthwith, or cease to carry any party or parties on commission.

Respectfully, yours,

R. P. WOODBURY, *Secretary.*

(Order of the board of directors.) (Rec., 146.)

The same plan was pursued in reference to Miss Jennie Goodwin, who began doing business in the Live Stock Exchange building, at Kansas City stock yards, as a commission merchant to buy and sell live stock for others, on commission. Very soon after she commenced

such business as a commission merchant, she was notified by the secretary of the Kansas City Live Stock Exchange that she must take out a membership or quit doing business as a commission merchant at the Kansas City stock yards. (Rec., 194.)

There can be little question, from the evidence in the case, as to the purposes of the exchange. It is thus described by various witnesses:

> J. F. CHAPIN: It is the purpose of the exchange to *control the business of live stock commission merchants*—that is to say, to compel all persons who do a business at this market on commission to belong to the exchange by taking out certificates of membership therein, and to regulate the method of their doing business by fixing commission charges, and in other matters. It is utterly *impossible* for any person, firm, or corporation to do a live stock commission business at this market without taking out a membership in the exchange. In case a person, or firm, or corporation undertakes to do a commission business at this market without taking out a certificate of membership in the exchange, the members of the exchange decline to do business with them, and their names are *posted on the bulletin boards in the exchange building*, and when so posted the members, under the rules, have to refuse to transact business with the person so posted. I have seen from time to time posters on the bulletin boards giving the names of the parties so posted.
>
> JENNIE M. GOODWIN: I knew that *if I did not take out a membership the members would refuse to buy from me, and I would lose my business.* They did not tell me in so many words that I would have to quit business, but I knew that was what they meant,

and they would have all the members refuse to buy from me, and that I could not, as a woman, single-handed and alone, afford to get the combined exchange against me. I, therefore, soon after the 1st of January, 1896, *quit the business of live stock commission merchant*, and have since that date had an office in the exchange building as a stenographer and notary public. (Rec., 196.)

JAMES H. THOMSON: To prevent anyone other than a member of the exchange *from doing business as a commission merchant*, various methods are employed. One method is under rule 16 of the by-laws of the exchange. When one has refused to join the exchange, or, having joined, withdraws therefrom, the board of directors passes a resolution directing the secretary to *post on the bulletin boards* the resolution or the order of the board, naming the member or firm so refusing, and directing all the members of the exchange to act accordingly. This is understood to mean that they shall refuse to do business or trade with such member so posted. Other methods are to notify by letter each member of the association, and such other parties as they desire to influence, of the action taken by the board. (Rec., 199.)

CHAS. HOWARD: An association known as The Kansas City Live Stock Exchange *controls the business of the live stock commission merchants* for the sale of live stock at this market on commissions. It is the purpose of the Kansas City Live Stock Exchange to *prevent any commission merchant from doing the business of buying and selling, on commission, on this market, unless such commission merchant belongs to the exchange*. If a man or firm try to do a commission business at the Kansas City stock yards without taking out membership in the exchange,

they use different methods for preventing buyers from purchasing the stuff they have to handle. Under rule 16 of the exchange, when a person or firm are posted on the bulletin boards, that is understood to be a *direction from the exchange* to refuse to trade or do business with the member so posted. (Rec., 215.)

SCOTT R. KENNEDY: It is the purpose of the Kansas City Live Stock Exchange, as demonstrated by their practice and custom, to influence all persons who do business at the Kansas City Live Stock Yards *to become members of the exchange*, and as far as possible *prevent* any firm or person from doing a business at this market, as a live stock commission merchant, who does not become a member of the exchange. The methods employed to prevent any person who is not a member from doing business as a live stock commission merchant vary. One method is to *post* such person or firm on the *bulletin boards* of the exchange, informing the other members of the exchange not to do business with the person so posted. (Rec., 212.)

JAMES PLUMMER: When one undertakes to do a business at the Kansas City stock yards of the nature and kind transacted by the commission merchants, that is, either buying or selling on commission, he is *required* to take out a *membership* and become a member of the Kansas City Live Stock Exchange. In affiant's opinion and from his observations of the methods employed by the Kansas City Live Stock Exchange, a person, or firm, or company, could not transact the business of a commission merchant at this market *without taking out a membership in the exchange*. (Rec., 187.)

WILLIAM WINDER: From my experience as a member of the exchange doing business here at the

Kansas City stock yards, and from my observation and knowledge of the methods used by the Kansas City Live Stock Exchange, and their rules and by-laws, I know it is the purpose of the exchange to *prevent any persons from doing business as live stock commission merchants* at this market unless they *belong to the exchange*. They use their rules and by-laws as far as they can to effect their purpose, and supplement the rules by other methods and influence parties to join the exchange, and to *force membership* on all parties acting as commission merchants. (Rec., 160.)

A. J. GILLESPIE: When a person desires to do a commission business at said Kansas City stock yards, *he has to buy a membership and subscribe to the rules of said exchange*. (Rec., 152.) It has been the policy of the exchange to use its influence as far as possible to *compel* all who do a live stock commission business at the Kansas City yards to *become members of the exchange*, so as to make them subject to the rules, and their number and influence is so great they have been able, so far, to bring about the membership in the exchange of all persons so trading, *or to practically prevent their doing business as live stock commission merchants*. While no force is used, the large numbers in the combination and the influence brought to bear by various methods has been effective. (Rec., 155.)

NORMAN B. GREER: When a stock commission man or firm tries to do business as a commission merchant at this market without being a member of the exchange, or having been a member and expelled or withdrawn, the combined influence of all the members of the exchange is used to *put obstacles in the way of his doing any business and preventing the sale by such commission man or firm of any cattle or hogs*

at this market. The method of doing that is by *posting* a notice on the bulletin board or the several boards in the Live Stock Exchange building, which under rule 16 is understood to mean a *direction* to all the members to not transact any business with the member so posted, under the heavy penalties and forfeitures prescribed in the rules; and, in addition to that, they use the moral influence of the entire combination *to prevent them from getting live stock from the country* and in getting the *packing houses* to refuse to purchase cattle or hogs from such commission man or firm. (Rec., 149.)

The membership includes not only commission men, but extends also to the *packing houses.* The packing houses, being corporations, do not hold memberships in their own names, but, as provided by rule 8, the memberships are carried in the names of employees. The memberships in the Armour Packing Company, the Swift Packing Company, the Dold Packing Company, the Fowler Packing Company, and the Schwarzschild & Sulzberger Packing Company are given at page 154 of the record.

The *packing houses* act in harmony with the commission merchants. When a person is posted in accordance with rule 16, the *packing companies*, as required by said rule and the construction given to it, *refuse to do business with such person.*

This may be illustrated by brief references to the record.

A. J. GILLESPIE: The influence of the Kansas City Live Stock Exchange on all the different *packing companies* is such that, if the exchange has posted anyone on the bulletin board as a party or

firm that the members of the exchange should not do business with, under rule 16, the *packing companies* usually refuse to trade with such posted firm or commission man, and it has the effect of *preventing* such posted commission merchant or firm from *selling live stock shipped to the member or firm to the packing houses or companies.* The practical effect of it is to prevent a commission firm or house from handling and selling its stuff in this market to the *packing companies*, or others, where the exchange tries to prevent it. (Rec., 154, 155.)

N. B. GREER: That the *packing houses*, companies, or corporations are not members of the Kansas City Live Stock Exchange, but each of said packing houses, companies, or corporations has representatives who do belong to and are members of the Kansas City Live Stock Exchange; the latter *influences, controls, and exercises authority and power to prevent said packing companies, corporations, and houses from doing business with Greer, Mills & Co.;* that said packing houses, companies, and corporations, although not members of said exchange as such, have during all the periods of time in which said Kansas City Live Stock Exchange was not enjoined by some order of a court of equity *refused* to trade with or buy live stock from affiant's firm, by reason of the *notice and threats of said exchange*, although theretofore they had *freely, and almost daily*, traded with and bought live stock of the firm of Greer, Mills & Co. (Rec., 137.)

JAMES H. THOMSON: The *local packers* are all connected with the exchange through certain representatives of the packing houses being members of the exchange, and through such representative membership, and through the influence of the large numbers belonging to the exchange, are influenced

by the will and direction of the exchange *in dealing with, or not dealing with, such parties*, commission houses and firms as the exchange do business with or are members thereof.

During the period of time that Greer, Mills & Co. were not protected by restraining orders of the courts, the *local packers* were influenced by the exchange *not to trade* with the firm of Greer, Mills & Co., or buy their hogs or cattle. Of the cattle sold at the Kansas City market, nearly all the fat cattle are sold to the local packers for slaughter here, or at their packing houses elsewhere. (Rec., 203.)

All of the commission merchants doing business at the Kansas City stock yards (with the exception of Greer, Mills & Co., who are protected by an injunction, as hereinafter stated) are members of the exchange, defendants herein. (Rec., 160, 185, 187, and 199.)

While, by the fiction of law, the owner can bring his own cattle to Kansas City and sell them on the market without employing a commission merchant, this is true in theory only, since, practically, he is compelled to employ a commission merchant, the shipper, unfamiliar with the intricate methods of doing business at the stock yards, is unable to get his cattle unloaded and cared for; and is also unable to procure a buyer at reasonable figures, since the buyers are all, or practically all of them, members of the exchange, and it is to their interest to require shippers to patronize the exchange.

A few quotations from the record will make this apparent.

A. J. GILLESPIE, a member of the exchange, and one of the defendants: While the owner of

cattle and hogs, theoretically, can bring them to this market and sell them himself, without the aid of a commission man, the methods to be gone through make it very difficult for such owner to get his cattle into and out of the yards and complete the sale of the same. In other words, there is too much red tape for him to get through with, so that the practice is for all shippers from the country to obtain the services of commission men to make their sales for them. While there is no rule directly forbidding commission merchants from buying and selling in the yards, without becoming members of the exchange, yet the rules are so worded, and the *custom and practice* of the exchange has been such as, in effect, to *prevent* them from doing business without becoming *members* of the exchange, and that is the way it is understood by nearly everyone trading there. The intent and purpose of the rules, as they are adopted and promulgated, indirectly accomplish the same purpose, and are so understood in practice (p. 159).

J. B. HARRELSON: I have been in that business (farming and feeding) for more than twenty years. I feed and ship annually from 600 to 1,000 head, and have been doing so for the past two or three years; prior to that time, I did not ship quite so many.

I am familiar with the methods and agencies for handling cattle at the Kansas City stock yards when shipped to those yards for sale. I know that in all my shipments I have *had to employ* the services of commission men to handle my stock in the yards, both in buying feeders at the stock yards and in selling my cattle after they were prepared for slaughter or shipment. When shipping to this market, I always consigned the shipment from my station, at Belton, to a commission firm at the stock

exchange direct, and such commission firm receive, look after yarding and care for the stock in the yards, and find purchasers for the same, and for which they charge a commission of fifty cents per day. If I shipped my cattle to this market, consigned to myself, and came here with them to handle them for myself and save the commission, and made a practice of doing that, I am satisfied I would *not obtain a fair market price*. I would be *ignored* by the buyers, under the influence of the *combined membership of the exchange*, as I had not patronized the commission men in the payment of their fifty cents per day. The object of the commission man being to get this fifty cents per day for selling, and the object of the combination of all the commission men being to enforce regulations requiring the payment of *fixed commission*, I never would be able to handle my own stock in selling the same at this market and get fair play and the market price. I know this from my *experience and observation* in *shipping* to this market and in my experience in dealing with the commission men here.

I believe there should be no restrictions placed in this market that would prohibit the feeder and shipper from making a private agreement either in the purchase or sale of his stock. Under the business as it is now done, and the methods for handling cattle here as they now exist, under the organization of the Kansas City Live Stock Exchange and their relation to the *packers* and *scalpers*, *no feeder or shipper can get along at this market without paying a commission of 50 cents a head for either selling stock shipped here for sale, or for buying the feeders taken to the country to fatten*. (Rec., 193.)

JAMES H. THOMSON: By reason of the complicated character of the sale or purchase of live stock, as the business has grown up at said market, it is

difficult for a person *not acquainted with the yards and the methods of doing business* to go through with all the steps necessary from the time of arrival of the car of stock from the country into the yards, the unloading, putting in pens, feeding, watering, weighing, and delivery to the purchaser, and the closing of the money transaction of settling for same to get through without the aid of some one experienced in the methods of doing business at the stock yards. For that reason *very few, if any*, farmers, stock growers, or feeders who own the cattle in the country and ship them to this market for sale undertake to sell their own cattle or live stock at this market, but employ live stock commission merchants, men located at the stock yards, who are experienced in all the details and methods of doing business at the stock yards, to assist them in handling their stuff as it arrives at the market and selling it for them. (Rec., 206.)

W. M. HURST: I do know that, in those years prior to the organization of the Kansas City Live Stock Exchange, some men *shipped* their cattle here and *sold them themselves*, without employing any commission men, or paying any man for the sale. So far as I know, the shipper has *not* sold his own cattle at this market himself, without the aid of commission merchants and the payment of commission, since the Kansas City Live Stock Exchange was organized. I have talked with different commission men, members of the exchange, since that, and asked them why the shippers did not sell their cattle themselves, in the yards here, without paying commission to the commission men—or, in other words, why it was not practiced by some shippers as it was before the exchange was organized, and they told me that they could not do it; that the shipper could not make a success of it since the organiza-

tion of the exchange as they did before. From my experience in shipping cattle here, and my observation in and about the stock yards here, and my talk with commission men, and familiarity with the methods employed at this market, it is my opinion that a shipper of cattle to this market for sale could not handle his cattle here and make a success in selling them, and obtain the fair market price, without employing and paying some commission merchant or firm to transact the business. The commission men belonging to the exchange are so numerous, and by reason of the customs, rules and regulations of the buyers and sellers, it has been, and is now, in my opinion, an impossibility to realize the full market price for stock shipped to this market without the employment of commission merchants to do the business. (Rec., 232.)

Rule 16 of the defendants, as construed by them, in the language of the lower court, "shuts out all dealing and business intercourse between members and non-members of the association. It is shown beyond cavil that *the entire membership of the association regards a commission merchant attempting to do business at the Kansas City stock yards without joining the exchange, as one violating this rule, and treats him accordingly.*"

This construction is amply indicated from the affidavits, as follows:

WILLIAM WINDER: One of the methods of bringing about such a boycott, or preventing members of the exchange, or any one under the influence of the exchange, from trading, is done through rule 16. The board of directors of the exchange pass an order that the party that they direct their antagonism against shall be posted on the bulletin board, and this order is carried out by the secretary

posting the bulletins on the several boards of the exchange building, the name of the party, and that such party, if a member of the exchange, has been fined or suspended or expelled, as the case may be, or that such party is not a member of the exchange, and for the members to govern themselves accordingly. This is taken to mean, by the members of the exchange, that they are not to transact any business with any such party so posted, and they carry out the order by refusing to trade, and by influencing, as far as they can, others that are not members of the exchange. (Rec., 161.)

JAMES PLUMMER: If a man undertakes to sell on commission, without taking out a membership in the exchange, complaint is made to the Kansas City Live Stock Exchange, and the members of said exchange influence one another, and influence the members of the Traders' Exchange not to deal with them, to quit buying, trading, and selling to them, and in that way they are shut out of business. I know it is considered against the rules of the Kansas City Live Stock Exchange to permit any persons to do a commission business at this market without their being members of the Kansas City Live Stock Exchange. The large number belonging to the exchange, through their combined influence, exercise a great power in preventing a person or firm in doing business here whom they do not want to do business. One of the methods of giving directions and notice to the members of the exchange and others that a person is trading in violation of the rules, or is doing business without belonging to the exchange, is by posting up notices on the bulletin boards. These bulletin boards are put up in conspicuous places in the halls of the exchange building. Members and other traders at this market, seeing such notices posted up, understand that

no trading is to be done with such posted person or firm while the exchange is against such person trading. They know by said posting that it is the will of the exchange, through its officers and members, that such person so posted, shall, as far as possible, be prevented from trading or doing business in that line.

In each instance, affiant knows that the combined effort of the exchange, when so directed against such person or firm, has been sufficient to materially damage the business or entirely prevent the business of such person or firm antagonized by the exchange. (Rec., 188, 189.)

J. F. CHAPIN: Under the articles of association, rules, and by-laws of the exchange, and the interpretation placed thereon by members of the exchange, and the methods and customs of doing business here, it is utterly impossible for any person, firm, or corporation to do a live stock commission business at this market without taking out a membership in the exchange. In case a person, firm, or corporation undertakes to do a commission business at this market without taking out a certificate of membership in the exchange, the members of the exchange decline to do business with him, and his name is posted on the bulletin boards in the exchange building, and when so posted, the members, under the rules, have to refuse to transact any business with the person so posted. I have seen from time to time posters on the bulletin boards, giving the names of parties so posted. From my experience here at the stock yards, I know it would be useless for a man to come here and engage in the commission business without being a member of the Kansas City Live Stock Exchange. (Rec., 197.)

JAMES H. THOMSON: For some years the Kansas City Live Stock Exchange have tried to control the entire business of buying and selling live stock on commission at the Kansas City stock yards market; that, in effect, the exchange has prohibited anyone from doing a commission business in the purchase and sale of live stock who refuses to become a member of the exchange. To prevent anyone other than a member of the exchange doing business as a commission merchant, various methods are employed. One method is under rule 16 of the by-laws of the exchange; when one has refused to join the exchange, or, having joined, withdraws therefrom, the board of directors pass a resolution, directing the secretary to post on the bulletin boards the resolution or the order of the board, naming the member or firm so refusing, and directing all the members of the exchange to act accordingly. This is understood to mean that they shall refuse to do business or trade with such member so posted. (Rec., 199.)

As a further instance of the construction placed by the members upon rule 16, the case of Greer, Mills & Co. will now be stated.

On November 16, 1896, the firm of Greer, Mills & Co. served upon the Kansas City Live Stock Exchange a written notice of withdrawal from said exchange, a copy of said notice being set out, being as follows (Rec., 213, 214):

To The KANSAS CITY LIVE STOCK EXCHANGE,
Kansas City, Kans.

You are hereby notified that Frank O. Mills, J. E. Greer, and Jesse Sherwood, all of Chicago, Illinois, composing the undersigned firm of Greer, Mills &

Co., do hereby withdraw from membership in the Kansas City Live Stock Exchange, and do hereby surrender and deliver to you certificates of membership in said exchange, being numbers 241, 59–A, and 60–A.

You are further notified that the undersigned hereby withdraw their consent formerly given to the "Articles of association, rules, and by-laws, and rules for inspection of hogs of the Kansas City Live Stock Exchange," and to each and every part and section thereof.

(Signed) GREER, MILLS & CO.

KANSAS CITY, MO., *Nov. 9, '96.*"

At the time of the surrender of said memberships, Greer, Mills & Co. were members in full standing in said exchange, the notice or prior suspension having been revoked by an order emanating from the Federal court at Kansas City. (Rec., 238.)

The resignation or withdrawal of said Greer, Mills & Co. was accepted on November 17, 1896, by the exchange. (Rec. 214.) After said voluntary withdrawal of Greer, Mills & Co., the exchange, on November 17, 1896, caused notices to be posted on the bulletin boards of the exchange, a copy of which is set forth at page 214 of the record, and also caused copies of the notices to be served on the commission houses doing business at the Kansas City stock yards, the purpose of the notice being to enforce and make effective rule 16.

Immediately after the posting of said notice, the members of the Kansas City Live Stock Exchange refused to deal with said firm of Greer, Mills & Co., and the packing houses refused to buy stock from them, and the exchange doctor refused to doctor hogs, and continued to

do so until about the 5th day of December, 1896, when Greer, Mills & Co. obtained a temporary restraining order from the court of common pleas in Kansas City, Wyandotte County, Kans. Between the 17th day of November, 1896, and the 5th day of December, 1896, the said firm of Greer, Mills & Co., although not members of the exchange, were practically shut out of the market at Kansas City, as far as dealing with any packing house or member of the exchange was concerned. (Rec., 213.)

It amply appears from the affidavits, that during the time that Greer, Mills & Co. were suspended from membership, and also when they had withdrawn from membership, and were not protected by an order of court, it was impossible for them to pursue their business of commission merchants at the stock yards. The packing houses refused to buy from them, and the commission merchants, defendants herein, refused to have any dealings whatever with them. They suffered great pecuniary loss, being compelled to reship stock consigned to them, to Chicago or St. Louis, or to turn it over to some other commission firm to sell, paying them full commissions therefor.

A few instances recited in the affidavits will make this fact plainly apparent.

> R. T. Bass, a member of the exchange, and one of the defendants herein: During such periods of time as Greer, Mills & Co. were suspended for nonpayment of a fine, and during the period of time since they withdrew their membership from the exchange and ceased to be members of the Kansas City Live Stock Exchange, as a general rule the packing houses and the speculators refused to purchase from me as the representative of Greer, Mills

& Co. During the time that restraining orders from the courts were in force the most of them did purchase from me, and are purchasing from me now. During the period of time that Greer, Mills & Co. were not having trouble with the Kansas City Live Stock Exchange I had no trouble in selling hogs for them to the various packing houses and the shippers and speculators, when we had the kind and quality each purchaser wanted. (Rec., 162.)

Detailed statements, showing the experience of Mr. N. B. Greer in a vain endeavor to make sales of commission goods, during the time that the firm of Greer, Mills & Co. were posted, are given in the record, pages 138, 139, 140, 141, 142. Various letters were received by Greer, Mills & Co. from their customers, of which the following is a sample (Rec., 143):

GREENWOOD, MO., *Sept. 14, 1896.*

GREER, MILLS & CO.,
Kansas City Stock Yards.

GENTLEMEN: It is common talk here that you are out of business, having been boycotted by the exchange trust. Fearing the power of their boycott I do not think it will be safe for me to consign my hogs to you, so do not think hard of me if I go to other parties.

Hoping that you will be successful in your fight against the trust, so I can come back to you with my trade, I am,

Yours respectfully,

J. A. MCKITTERICK.

Other letters and telegrams are set forth in record, pages 143 and 145.

A. S. GILLESPIE (a member of the exchange, and one of the defendants): I saw a notice posted

on the bulletin board of said exchange, about November 17, 1896, notifying members that Greer, Mills & Co. had withdrawn from the exchange, and giving notice that the members of the exchange must govern themselves accordingly. Our firm was also served with a copy of the notice. There was also a copy left at our office. After this notice was served it was my understanding that I, or our firm, could not do business with Greer, Mills & Co. without being liable to the penalty of a fine or suspension from the exchange.

Prior to that time our firm had been trading a good deal with Greer, Mills & Co., buying and selling stock hogs and cattle; I think mostly cattle. Since the notice was served upon us we have done no trading with them, either buying or selling, from them. Our relations with Greer, Mills & Co. have always been pleasant, and our dealing with them satisfactory, and the only reason we can not trade with them is because of the notice served on us by the secretary of the exchange. Under the custom and practice of the exchange, as provided in the rules and regulations, as I understand them, we would be liable to a fine of $500 for every offense if we traded with Greer, Mills & Co., and in case of two or more violations, we might be expelled from the exchange.

This notice served on us virtually shuts Greer, Mills & Co. out of the market, so far as we are concerned, as we can not afford to do business with them. I have talked with several members of the exchange since the notice aforesaid, and they have stated that they did not trade with Greer, Mills & Co. It is a fact notorious and well-known among the members of the exchange, and notorious among parties trading there on this live stock market, that

Greer, Mills & Co. are being boycotted in their trade by all, or nearly all, of the members of the exchange.

At this time they are now doing business, and we are trading with them because of restraining order from the court of common pleas of Wyandotte County, Kans., issued against the exchange and its members, preventing them from refusing to trade or do business with that firm by reason of the combination or association, and preventing the exchange from enforcing rule 9 (16) against them. (Rec., 153.)

JAMES PLUMMER: Affiant has often read notices posted up on the bulletin boards in the exchange building, wherein the attention of the members of the exchange was called to the rules prohibiting trade with the person or firm named in such posted notice; and from the interpretation given by the members themselves affiant knows that this is the way they give notice to members and others that the rules require them not to trade or do business with them. (Rec., 190.)

JAMES H. THOMSON: In the case of Greer, Mills & Co., after they had surrendered the membership certificates of each and all the members of the firm, and had ceased to be members of the Kansas City Live Stock Exchange, the board of directors passed a resolution and order, directed to the secretary to post the names of Greer, Mills & Co. on the bulletin boards, and directing each and all the members not to do business with them, and from the time of such posting the members of the exchange exerted their influence with members and others to prevent them from carrying on the business of live stock commission merchants, and would continue to do so but for the protection of the courts through restraining orders or injunctions. (Rec., 205.)

The commissions charged, in accordance with rule 9 of the exchange, are substantially 50 per cent of the commissions charged prior to the organization of the exchange. This is apparent from the record, as follows:

EDWIN E. WILSON: From 1881 to 1886 I was engaged in the cattle business, and shipped and sold at the Kansas City Live Stock Exchange from 5,000 to 10,000 head a year. During those years I made arrangements to receive rebates of 25 cents per head from John R. Stoller & Co., A. J. Snider & Co., Quinlan & Co., and had offers from numerous other commission merchants to handle our cattle at the yards at a commission not to exceed 25 cents per head. It was notorious that the average solicitor for commission firms at Kansas City would rebate on commission to at least 25 cents per head. Regular soliciting agents were stationed at Dodge City, Caldwell, and Kiowa, Kans., for the purpose of soliciting with shippers. Under the active competition of these solicitors it is very doubtful if any of the commissions realized on the sales of cattle were in excess of 25 cents per head, except where commission firms had made loans to cattle shippers, it being always an understood and implied condition of a contract for a loan that the commission merchants making the loan were to sell the cattle and receive the maximum commission of 50 cents per head. Outside of particular instances where loans were made, commissions were largely matters of competition. (Rec., 229.)

JOHN LAWRENCE: I am a shipper of live stock to the Kansas City market, and have been for the past twenty-five years. Prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and the commission

merchant to whom the shipment was made to make such bargain as they could agree upon as to the rate of commission to be charged for selling stock. During all the time prior to the organization of the Kansas City Live Stock Exchange the commission paid by him to live stock commission merchants for selling his cattle averaged about 25 cents per head, or about one-half of the rate charged at the present time and since the organization of the exchange. (Rec., 230.)

W. M. HURST: I have been a shipper of live stock to the Kansas City stock market for twenty years or more. Prior to the organization of the Kansas City Live Stock Exchange in 1886 the rates of commissions of commission merchants at Kansas City were whatever the shipper and commission merchant agreed upon. During all the time of shipment, prior to the organization of the Kansas City Live Stock Exchange, I had offers from or could have had agreements with commission men to sell the cattle I shipped here for 25 cents per head as commissions for their services, and a good many cattle were sold for me at 25 cents per head commission. If the cattle shipper in those days, prior to the organization of the exchange, shipped his cattle to this market without a previous agreement concerning the rate of commission and without being tied up with any kind of a contract for a loan or otherwise it is my opinion that he could have procured the services here of competent commission men to make his sales at 25 cents per head for cattle. (Rec., 231.)

N. B. GREER: Prior to the organization of the exchange the commission merchants made such agreement as to the price of commission as they pleased with their customers. While the nominal

supposed charge, as generally understood among commission merchants, was 50 cents per head for cattle, the actual facts were they made agreement with their country customers for commissions largely based upon the amount of business the country customer would furnish them, and it was usual and customary to rebate 25 cents per head for cattle, which would be one-half of the commission as shown on the account sales rendered by the commission man to his country customers. (Rec., 236.)

WM. P. GOODE: Prior to the organization of the Kansas City Live Stock Exchange I was a shipper to the Kansas City market, and have been for twenty years. Prior to this organization it was the custom and practice for the shipper and commission merchant to whom the shipment was made to make such bargains as they could agree upon as to the rate of commission to be charged; that, while the supposed charges for commissions were 50 cents per head for cattle and 85 per carload for hogs, affiant sold his cattle through commission men for 25 cents per head, or rather procured a rebate of 25 cents per head on cattle and $1 on hogs per carload. The rate of commission on both hogs and cattle depended a great deal on the volume of business, and where the shipper had any considerable amount of stock to sell it was usually the custom to sell them as low as 25 cents per head for cattle and $4 per carload for hogs. (Rec., 249.)

JOHN O. BOGGS: Resides at Lees Summit, Mo., and has been a shipper to the Kansas City market for twenty-five years. Prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and commission merchants to whom a shipment was made to make such bargain as they could agree upon as to the rate

of commission to be charged for selling said stock, both hogs and cattle; that, while the supposed charges for commission were 50 cents per head for cattle and $5 per carload for hogs, affiant sold his cattle through commission men for 25 cents a head and $2.50 rebate for hogs per carload. The rate of commission on both hogs and cattle depended a great deal upon the volume of business, and where the shipper had a large amount of stock to sell it was the custom and practice to sell them as low as 25 cents per head for cattle and $2.50 per carload for hogs. Affiant knows it was a common thing for commission men to rebate 25 cents per head for cattle. (Rec., 250.)

DANIEL WHITING: Resides at Lees Summit, and has been a shipper to the Kansas City market for twenty years. Prior to the organization of the Kansas City Live Stock Exchange it was the custom and practice for the shipper and commission merchant to whom his shipment was made to make such bargain as they could agree upon as to the rate of commission for selling both cattle and hogs. While the supposed charges for commission were 50 cents per head for cattle and $5 per carload for hogs, affiant sold his cattle through commission men for 25 cents a head and $2.50 for hogs per carload. Affiant knows it was a common thing for commission merchants to rebate 25 cents per head for cattle and $2.50 per carload for hogs. (Rec., 252.)

It also appears from the evidence (Rec., 187) that both the speculators and traders purchase from the commission men and do not purchase directly from the owner or shipper.

The affidavits filed by complainants speak for themselves, and the court is respectfully referred to the language of the affidavits as a complete vindication of the

charge that they consist largely of "conclusions, vituperative denunciations and hearsay."

It is scarcely to be expected that affidavits will be absolutely free from the statement of conclusions or even irrelevant matter, since there is no judicial officer interposed to pass upon the character of the testimony. That the complainant's affidavits may be subject to this criticism is not denied. What we are relying upon is the competent and not the incompetent testimony. In the respect complained of, however, we most emphatically assert that the complainant's affidavits are far superior to those of the appellants, as the court will find by the most casual observation.

While complaining of the irrelevant matters injected into the affidavits, appellants have seen proper to relate their version of prior controversies between the exchange and Greer, Mills & Co. Even in this respect we would not complain if the matter had been stated with any degree of fairness or accuracy. Since they have stated their side of this controversy, which we believe to be irrelevant, it may not be unfair to state the other side, which we concede to be equally irrelevant.

The directors of the exchange employed detectives for the purpose of convicting someone of breaking the rules in respect of commissions. The detectives made decoy shipments of cattle, and reported that an employee of Greer, Mills & Co. had broken the rule by paying a rebate of $6. It was not claimed that any member of the firm of Greer, Mills & Co. or their manager or cashier had any knowledge whatever of the transaction.

There was the form of a trial before the directors, who combined in one body the functions of secret service, prosecuting attorneys, and the judiciary. It is not surprising, therefore, that there was a form of conviction, although none of the members of the firm of Greer, Mills & Co. had any knowledge or notice of the extraordinary proceeding until it culminated in a so-called conviction. Possibly some such form of proceeding was necessary in order to make an example of someone and so maintain the high standard of "moral principles." It may be that it was fate which selected Greer, Mills & Co. as the victim. It certainly is true that Greer, Mills & Co. assert that, so long as they belonged to the exchange, they complied with its rules in every respect.

It is also true that suit was brought in the circuit court of Wyandotte County, Kans., by Greer, Mills & Co., in which the position was taken that the by-laws were unlawful. They were sustained in that position (*Greer* v. *Payne*, 46 Pac. Rep., 190), but the court denied them relief on the ground that they were still members of the association. Greer, Mills & Co. thereupon served a notice upon the exchange withdrawing their consent to the rules declared to be illegal, which notice is at page 134 of the record, and they thereupon instituted an action (*Greer* v. *Stoller*, 77 Fed. Rep., 1) in which it was held that the "court could not proceed to judgment in the action for the want of jurisdiction over all the necessary parties to a full and final determination." They thereupon, and while, by virtue of the restraining

order, in full membership and entitled to all the privileges of membership, withdrew from the association, and their withdrawals were accepted on November 17, 1886. (Rec., 186.) That the appellants so considered it is apparent from their answer, where it is stated that they "subsequently voluntarily withdrew from said exchange."

It is stated by appellants, at page 27 of their brief, that rebuttal affidavits were filed "during the hearing without any previous knowledge of their contents or existence on the part of the defendants." This we most emphatically deny. Counsel has doubtless forgotten that this question was raised at the hearing, and it was shown to the satisfaction of the court that his co-counsel had for some time been made aware of the existence of the affidavits, and had had an opportunity to examine them and to reply to them if desired. While neither this statement nor its denial appears in the record, the fact remains that the affidavits were admitted by the lower court; and the presumption will be indulged, in accordance with the actual fact, which is that they were properly admitted on the showing of due notice. (*Van Slone* v. *Manufacturing Company*, 142 U. S., 128.)

Upon the hearing a temporary injunction was granted. The opinion of the court will be found at page 259 of the record.

BRIEF AND ARGUMENT.

I.

THE BY-LAW OF THE DEFENDANTS WHICH PROHIBITS THE SENDING OF PREPAID TELEGRAMS IS A RESTRAINT OF TRADE OR COMMERCE AMONG THE SEVERAL STATES.

Section 11 of article 9 of the rules and by-laws of the Kansas City Live Stock Exchange is as follows:

> SEC. 11. Any member of this association, or firm or corporation represented herein, sending or causing to be sent a prepaid telegram or telephone message quoting the markets, giving information as to the condition of the same, shall be fined not less than $100 nor more than $500. If said fine be not paid within three days, said firm or member shall be suspended until said fine is paid:
>
> *Provided, however*, That prepaid messages may be sent to shippers, quoting actual sales of their stock on the day made; also to parties desiring to make purchases on this market.

The purpose of this section is to *prevent the sending* of prepaid telegrams by the defendant commission men to their various customers in the twenty-four States and Territories tributary to the Kansas City market. A prepaid message may be sent to shippers quoting actual sales of their stock on the day made, but *not otherwise*. This section is a part of the contract between the members of the exchange, and is clearly an attempt to regulate and restrict the sending of messages by telegraph and telephone between citizens of various States and Territories, and *operates upon and directly affects interstate business*. The purpose of the section doubtless is to restrain com-

petition among the members, and so to prevent the active and energetic from acquiring an advantage over the others.

The transmission of messages by telegraph lines from one State to another is held by the Supreme Court to constitute interstate commerce. Any attempt on the part of the State authorities to *limit, regulate, restrict, or burden such transmission of interstate messages has been uniformly held to be entirely inoperative and void*, as repugnant to that clause of the Constitution which gives to Congress authority to regulate commerce among the States.

In *Leloup* v. *Port of Mobile* (127 U. S., 640) an ordinance was passed which provided "that the license tax for the year from the 15th of March, 1883, to the 15th of March, 1884, be, and the same is hereby, fixed as follows: * * * Telegraph companies, $225." The court held that the ordinance was *void*, as an attempt to regulate interstate commerce, saying (p. 645):

> Now, we have decided that *communication by telegraph is commerce*, as well as in the nature of postal service, and if carried on *between different States* it is commerce among the several States, and directly within the power of regulation conferred upon Congress, and *free from the control* of State regulations, except such as are strictly of a police character. * * *
>
> In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subject of that commerce, or on the receipts derived from that transportion, or on the occupation or business of carrying it on, and the reason is that such taxation is a *burden on that com-*

> *mere*, and amounts to a *regulation of it*, which belongs *solely* to Congress. This is the result of *so many recent cases* that citation is hardly necessary.

It is very clear that none of the States or Territories to which the business of the defendants extends could enact any law intertering with or *abridging the rights of persons in Kansas or Missouri to send prepaid telegrams*. If we can concede such a law to have existence, it would not only be repugnant to the commerce clause of the Federal Constitution, but would also interfere with the inherent right possessed by every citizen to *make such contracts* in the conduct of his business as, not being unlawful, should seem to him requisite and necessary in its conduct.

If a State, by its legislature, or a municipality, by its council, is unable to burden interstate commerce or place any restriction upon it, or regulate it in any manner, it is difficult to see how this may be done *by agreement among members of a voluntary association*. To concede such a right would be to grant to an association of individuals powers in the restriction and regulation of interstate commerce which are denied to sovereign States.

The power to regulate necessarily implies the power to destroy. If they have the right to restrict telegraph messages between States to *prepaid messages*, they would also have the right to *prevent* the sending of telegrams entirely. This is aptly illustrated in the case last cited, where the court says (p. 645):

> Can a State prohibit such a company from doing such a business within its jurisdiction, unless it will pay a tax and procure a license for the privilege?

> *If it can, it can exclude such companies, and prohibit the transaction of such business altogether.* We are not prepared to say that this can be done.

In *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.* (96 U. S., 1) the statute of Florida granted to the Pensacola Telegraph Company the exclusive right of establishing and maintaining lines of electric telegraph as therein specified. This act was held to be *void*, as an attempt to usurp the power of Congress to regulate commerce between the States.

The court says (p. 12):

> The State law in question, so far as it confers exclusive rights upon the Pensacola Company, is certainly in conflict with this legislation of Congress. To that extent it is therefore *inoperative* as against a corporation of another State entitled to the privileges of the act of Congress. Such being the case, the charter of the Pensacola Company does not exclude the Western Union Company from the occupancy of the right of way of the Pensacola and Louisville Railroad Company under the arrangement made for that purpose.

In *Telegraph Company* v. *Texas* (105 U. S., 460) a statute of the State of Texas contained the provision that every chartered telegraph company doing business in the State should be required to pay a tax of 1 cent for every full-rate message sent and one-half cent for every message less than full rate. The act was held to be *void*, as an attempt to *regulate commerce*.

Mr. Chief Justice Waite, speaking for the court, used the following language (464):

> *In Pensacola Telegraph Co.* v. *Western Union Telegraph Co.* (96 U. S., 1) this court held that *the*

telegraph was an instrument of commerce, and that telegraph companies were subject to the regulating power of Congress in respect to *their foreign and interstate business*. A telegraph company occupies the same *relation to commerce*, as a carrier of messages, that a railroad company does as a carrier of goods. Both companies are *instruments of commerce*, and their business is commerce itself. They do their transportation in different ways, and their liabilities are in some respects different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits.

After reviewing the case of the *State Freight Tax* (15 Wall., 232), the court continued (p. 465):

> The present case, as it seems to us, comes within this principle. The tax is the same on every message sent, and because it is sent, without regard to the distance carried or the prices charged. It is in no respect proportioned according to the business done. If the message is sent, the tax must be paid and the amount determined solely by the class to which it belongs. If it is full rate, the tax is 1 cent, and if less than full rate, one-half cent. Clearly, if a fixed tax for every 2,000 pounds of freight carried is a tax on the freight, or for every measured ton of a vessel a tax on tonnage, or for every passenger carried a tax on the passenger, or for the sale of goods a tax on the goods, this must be a tax on the messages. As such, so far as it operates on *private messages sent out of the State*, it is a *regulation* of foreign and *interstate commerce* and beyond the power of the State. That is fully established by the cases already cited.

In *Western Union Telegraph Co.* v. *Pendleton* (122 U. S., 347) the statutes of the State of Indiana required telegraph companies to deliver dispatches by messenger to

the person to whom the same were addressed or to their agents, provided they resided within 1 mile of the telegraphic station or within the city or town in which such station was located. It was held that such statutes were in conflict with the clause of the Constitution of the United States which vests in Congress the power to regulate commerce among the States, in so far as they attempt to regulate the delivery of such dispatches at places situated in other States.

It was also held that the authority of Congress over the subject of commerce by telegraph with foreign countries or among the States was supreme, and that *no State could impose any impediment on its freedom by attempting to regulate the delivery in other States of messages received within its own borders.*

The court says (p. 358):

> In these cases the *supreme authority of Congress* over the subject of commerce by the telegraph with foreign countries or among the States is affirmed, whenever that body chooses to exert its power; and it also held that the States can impose no *impediments* to the *freedom* of that commerce. In conformity with these views the attempted regulation by Indiana of the mode in which messages sent by telegraph companies doing business within her limits shall be delivered in other States *can not be upheld.* It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose, as the imposition of a tax by the State of Texas upon every message transmitted by a telegraph company within her limits to other States was beyond her power. Whatever authority the State may possess

over the transmission and delivery of messages by telegraph companies within her limits, it does not extend to the delivery of messages in other States.

The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, *uniform regulations*, where such uniformity is practicable, *against conflicting State legislation*. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, *if each State was vested with power to control them beyond its own limits*. The manner and order of delivery of telegrams, as well as of their transmission, would vary according to the *judgment of each State*. Indiana, as seen by its law given above, has provided that communications for or from officers of justice shall take precedence, and that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest out of its order; but that all other messages shall be transmitted in the order in which they are received; and punishes as an offense a disregard of this rule. Her attempt, by penal statutes, to enforce a delivery of such messages in other States, in conformity with this rule, could hardly fail to lead to *collision with their statutes*. Other States might well direct that telegrams on many other subjects should have precedence in delivery within their limits over some of these, such as telegrams for the attendance of physicians and surgeons in case of sudden sickness or accident, telegrams calling for aid in cases of fire or other calamity, and telegrams respecting the sickness or death of relatives.

Indiana also requires telegrams to be delivered by messengers to the persons to whom they are addressed, if they reside within 1 mile of the telegraph station, or within the city and town in which

> such station is; and the requirement applies, according to the decision of its supreme court in this case, when the delivery is to be made in another State. *Other States* might conclude that the delivery by messenger to a person living in a town or city being many miles in extent was an unwise burden, and require the duty within *less limits;* but if the law of one State can prescribe the order and manner of delivery in another State, the receiver of the message would often find himself incurring a penalty because of *conflicting laws*, both of which he could not obey. *Conflict and confusion would only follow the attempted exercise of such a power. We are clear that it does not exist in any State.*

It is, of course, true that a State has the right to regulate its commerce which is wholly internal. It has the right to create and regulate a telegraph line which is entirely within its borders, and presumably the right to tax business done entirely within the State. Such is held to be the rule in *Postal Telegraph Co.* v. *Charleston* (153 U. S., 692). The State has also the right, as an exercise of the police power, to pass a law regulating the delivery of messages after they have been received within the State. Such a law is a valid exercise of the police power, which operates upon the message after it has been received within the State and after it has ceased to be a subject of interstate commerce. Such was the rule in *Western Union Telegraph Co.* v. *James* (162 U. S., 650).

Under the authorities, there can be no question about communication by telegraph from one State to another being "commerce among the several States;" and in the case at bar there can be no question that telegrams sent from the Kansas City stock yards by the defendants to

their various customers throughout the Western States are subjects of interstate commerce. If the rules and by-laws of the Kansas City Live Stock Exchange amount to "a contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce," a subject to be hereafter considered, then, beyond any doubt, they operate upon commerce between the States.

Congress has left the subject of telegraphic communication entirely free from any restrictions of its own, and so has impliedly declared that there shall be no restrictions placed upon such commerce, and that it shall be free from any burdens whatsoever. It has impliedly said that *dealers and traders shall have the right to communicate with each other by interstate messages, without any restriction or burden or regulation.*

Congress has gone one step further, and has declared affirmatively, by the act of July 2, 1890, *that in commerce of this class there shall be no "restraint."* The freedom from restraint as to interstate trade and commerce, by this act, *is coextensive with the Federal power.*

It is too plain for argument that if the State of Missouri or the State of Kansas were to pass an act *prohibiting prepaid telegrams to other States quoting the condition of the market* such an act would be *void*, as repugnant to the Federal Constitution, which reserves to Congress the right to regulate interstate commerce. If *Kansas* should pass a law that no interstate telegram should be sent unless it be prepaid, *Nebraska* would equally have the right to pass a law that no telegram should be received in that State unless it were sent "collect"; and the effect would be that *telegraphic communication* between the

States of Kansas and Nebraska would be *impossible*. It was to prevent the possibility of such conflicting State legislation that power and authority over interstate commerce were lodged in the General Government.

If the *members of the Kansas City Live Stock Exchange* have the right to agree among themselves that none but prepaid telegrams shall be sent to their various correspondents throughout the Western country, the *stock raisers throughout Colorado, New Mexico, and other Western States* would equally have the right to form a combination which should provide that they would deal with no stock yards association which did not send them daily reports of the condition of the market *by prepaid telegrams*. If such combinations were made, it would follow that *interstate commerce between the stock growers and stock commission men* would be thrown into the greatest *confusion*, if not *prevented* altogether. Interstate commerce would be burdened, hampered, and restrained, instead of being open and free and without restriction, as Congress, both by its nonaction in respect to interstate telegrams as well as by its positive legislation against restraints and monopolies has declared it shall be.

We are unable to see any escape from the conclusion that the section of the by-laws above quoted is in the very teeth of the act of July 2, 1890.

While this question was urged upon the court below and decided adversely to the appellants, it is a significant fact that they, from the beginning of this litigation to the present time, have been unable or unwilling to answer the question here presented.

II.

THE BY-LAW OF THE DEFENDANTS LIMITING THE NUMBER OF SOLICITORS THAT MAY BE EMPLOYED IS "IN RESTRAINT OF TRADE OR COMMERCE AMONG THE SEVERAL STATES."

Section 10 of rule 9 of the rules and by-laws of the Kansas City Live Stock Exchange is as follows:

> SEC. 10. No agent, solicitor, or employee shall be hired except upon a stipulated salary, not contingent upon commissions earned (save as provided in section 2 of this rule. No solicitor shall be employed except as a *bona fide* traveling agent, who shall not solicit consignments *local to his own neighborhood only* nor to secure his *individual trade*. Nor shall any agent, solicitor, or employee be hired *who is employed by any other party or parties* or who is *actively engaged in other business* (save as provided in section 2 of this rule). Members of this exchange must file with the secretary, within five days of employment, the names and addresses of their solicitors. *More than three solicitors shall not be employed at one time by a commission firm or corporation.* Members of a commission firm or corporation—resident or nonresident of Kansas City—may travel as solicitors, but must be registered *as one of the three allowed each firm or corporation.* It shall be a *violation* of this rule for any solicitor representing or claiming to represent a commission firm or corporation in any other market to solicit for any Kansas City firm; and members shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, solicits for a Kansas City firm or corporation.

This section, in reference to the employment of solicitors by commission men in the stock yards, is clearly an unlawful attempt to regulate interstate commerce. The solicitors, as their name implies, are employees of the various commission houses, who travel to distant States and Territories and there solicit shipments to be sent to their employers in Kansas City, in order that their employers may realize commissions for making sales, collect from the proceeds of the sale moneys advanced, etc.

No reason is perceived why one of the defendants may not contract with its solicitor so that his compensation shall be contingent upon commissions earned, unless the object be to prevent rivalry and competition among the solicitors. For some reason it appears to have been deemed advisable to suppress *the dominating principle of self-interest among solicitors.*

It is also provided that no traveling agent shall solicit consignments local to his own neighborhood. This is apparently another effort to prevent the healthy flow of free competition. Its effect is to deprive the members of the advantage which might be derived by some who, actuated by ordinary business motives, would seek to increase their business by employing solicitors from the locality where trade is sought.

Again, members are prevented from employing as a solicitor any person who is employed by any other party or parties or who is actively engaged in other business. This is another restraint upon the *right to contract*, and prevents the solicitor from offering his services to the person who will pay the most for them.

The most vicious provision in the rule is the one *prohibiting the employment of more than three solicitors by a commission firm or corporation.* The business of commercial travelers, traveling salesmen, and solicitors is declared by the Supreme Court to constitute *interstate commerce.* Such commerce must remain free from any State legislation and free from the control or restraint by any person or combination of persons. The rule in this respect is also an unlawful inhibition upon the privilege possessed by each person under the Constitution to make *lawful contracts in furtherance of his business.* In this respect the members have surrendered their dominion over their own business and permitted the directors to establish a species of regency. That they have no right *to abdicate control over their business and commit its management to other persons will be considered hereafter.*

There can be little or no question that the by-law in regard to the employment of solicitors is one which directly affects interstate commerce.

In *McCall* v. *California* (136 U. S., 104) the New York, Lake Erie and Western Railroad Company established an agency of that line in San Francisco, for the purpose of inducing passengers going from San Francisco to New York to take that line from Chicago to New York, but the agent was not engaged in selling tickets for the route or receiving or paying out money on account of it. It was held that *this agency* was engaged in *interstate commerce,* and that a license tax imposed upon the agent for the privilege of doing business in San Francisco was a tax upon interstate commerce, and was unconstitutional.

After citing authorities, the court says (p. 108):

Tested by these principles and definitions, what was the *business* or *occupation* carried on by the plaintiff in error on which the tax in question was imposed? It is agreed by both parties that his business was that of *soliciting passengers to travel over the railroad which he represents as an agent*. It is admitted that the travel which it was his business to solicit is not from one place to another *within the State of California*. His business, therefore, as a railroad agent, had no connection, direct or indirect, with any *domestic commerce* between two or more places within the State. His employment was limited exclusively to inducing persons in the State of California *to travel from that State into and through other States to the city of New York*. To what, then, does his agency relate except to *interstate transportation of persons?* Is not that as much an agency of interstate commerce as if he were engaged in soliciting and securing the transportation of *freight* from San Francisco to New York City over that line of railroad? If the business of the New York, Lake Erie and Western Railroad Company in carrying passengers by rail between Chicago and New York and intermediate points, in both directions, is interstate commerce, as much so as is the carrying of *freight*, it follows that the soliciting of passengers to travel over that route was a part of the business of securing the passenger traffic of the company. The object and effect of his soliciting agency were to swell the volume of the business of the road. It was one of the *means* by which the company sought to increase, and doubtless did increase, its interstate passenger traffic. It was not *incidentally* or *remotely* connected with the business of the road, but was a *direct method of increasing that business*. The tax upon it, therefore, was, according

to the principles established by the decisions of this court, a tax upon a means or an *occupation* of carrying on interstate commerce pure and simple.

The employment of solicitors in this case is for the purpose of procuring the shipment of cattle from twenty-four States and Territories to the Kansas City stock yards. If it is interstate commerce to solicit *passengers* to travel over a railroad in a distant State or States, may not *the solicitation of shipments of cattle from one State to another be equally denominated interstate commerce?*

The regulation of such commercial travelers or solicitors belongs alone to the domain of Federal legislation. No State has the power to in any manner interfere with any of the various *solicitors of the defendants* while engaged in the various States and Territories in soliciting shipments of cattle for consignment to Kansas City.

In *Asher* v. *Texas* (128 U. S., 129) it is held that—

> A State law exacting a license tax to enable a person within the State to *solicit orders and make sales* there for a person residing within another State is repugnant to that clause of the Constitution of the United States which gives Congress the power to regulate commerce among the several States, and is *void*.

The act of the legislature in the case just quoted provided that there should be levied and collected "from every commercial traveler, drummer, salesman, or solicitor of trade, by sample or otherwise, an annual occupation tax of $35, payable in advance;" and this act was held to be void as a regulation of interstate commerce.

In *Robbins* v. *Shelby County Taxing District* (120 U. S., 489), the following act of the legislature of the State of

Tennessee was held to be void as contravening the constitutional provision in reference to the regulation of interstate commerce:

> All drummers and all persons not having a regular licensed house of business in the taxing district of Shelby County, offering for sale or selling goods, wares, or merchandise therein by sample, shall be required to pay to the county trustee the sum of $10 per week, or $25 per month, for such privilege.

The court says (p. 497):

> It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce can not be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of *The State Freight Tax* (15 Wall., 232). *The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. A New Orleans merchant can not be taxed there for ordering goods from London or New York, because in the one case it is an act of foreign and in the other of interstate commerce, both of which are subject to regulation by Congress alone.*
>
> *State* v. *Scott*, 39 S. W. Rep., 1.
> *Baxter* v. *Thomas*, 46 Pac. Rep., 479.
> *McNaughton* v. *McGirl*, 49 Pac. Rep., 651.
> *Gunn* v. *Sewing Machine Co.*, 20 S. W. Rep., 591.
> *Miller* v. *Goodman*, 40 S. W. Rep., 718.

We must conclude from the foregoing cases that a person engaged in business in the State of Missouri or

Kansas has the absolute right, under the Constitution of the United States, *to send his solicitors and traveling men into distant States and Territories for the purpose of securing interstate business.* Whether that business consist in securing shipments of cattle from distant States and Territories to the Kansas City stock yards, or in routing passengers over some railroad to a distant State, the same principle applies. In each case it is commerce among the States, and Congress, not only by its *nonaction*, but by its *positive legislation*, has declared that such commerce shall be free and unrestricted. It is not within the power of any single State to *tax the solicitors or to regulate their number.* If it were, Kansas might authorize the commission men to have three, Missouri ten, Nebraska one, Colorado another number, and in this way interstate commerce in the way of soliciting business in distant States and Territories would be impossible.

That commerce of this nature is restricted and burdened by the by-law in question can admit of no controversy. Each one of the defendants and each person doing a commission business at the Kansas City stock yards has the *constitutional right* to send into distant States and Territories *as many drummers* or solicitors as his business will warrant, and until Congress legislates to the contrary *no power can lawfully limit him in this respect.* The existence of the by-law is indisputable proof that but for it members of the exchange would enjoy their constitutional right of sending their traveling men throughout the country for the purpose of soliciting trade, and so increasing their business, *since if this were not so the by-law would not have been deemed necessary.*

The rules and by-laws of the defendants in this case undertake to limit and restrict the amount of interstate commerce in which its members may be permitted to engage. If they should by a by-law provide that no member should handle cattle having their origin in the State of Montana we apprehend that would be a "restraint of trade or commerce among the States." If the by-laws should provide that no cattle arriving from the State of Colorado should be sold by commission men at the Kansas City market we apprehend the association would be within the condemnation of the statute of July 2, 1890. If the defendants can *limit* they must necessarily have the power to *prohibit* in the matter of solicitors. *Leloup* v. *Port of Mobile*, 127 U. S., 640 (645).

The by-law is clearly an attempt to regulate interstate commerce. If this association can, by its by-laws, limit its number of solicitors, it can also prohibit the sending of solicitors into foreign States and Territories, and so restrict that commerce among the States which Congress has declared shall be free.

The by-law above quoted is *unlawful* and *in restraint of trade*, in that it *deprives* the parties who have consented to it of their *freedom in trade*.

The latest expression of any court upon the subject is *People* v. *Chicago Live-Stock Exchange* (48 N. E. Rep., 1062), where it is held that *a similar by-law in the Chicago Live-Stock Exchange was void, as against public policy*, and a proceeding in *quo warranto* was authorized to be brought against the exchange.

Section 7, involved in that controversy, is as follows:

> There shall be no solicitor employed who is not a member of this exchange. There shall be no solicitor employed except on a stipulated salary, which shall not be contingent on commission earned. Members of the exchange shall file with the secretary thereof, within five days of the time of employment, the name and post-office address of their traveling solicitors. Members shall not employ to exceed three traveling solicitors for each firm in the States of Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, and Minnesota. Members of a commission firm may solicit in the aforesaid States, provided they be counted as the solicitors allowed therein, and provided further, that they comply in all respects with the restrictions governing such solicitors. It shall be a violation of this rule for any solicitor representing, or claiming to represent, a commission firm located in another market to solicit for any Chicago firm in the States before named, and members shall be held responsible for any violation of this section by their partners or employees at other market centers, and shall be held accountable for the acts of any solicitor who, under the guise of soliciting for a branch house, invades the territory above described, and solicits for a Chicago firm. Members may employ an unlimited number of solicitors to solicit outside of the foregoing prescribed territory, provided they comply in all respects with the restrictions governing solicitors. It shall be a violation of this rule for any nonresident member or stockholder of any commission firm to solicit for any commission firm in which he may be interested, unless he be duly registered and employed as a solicitor under the rules and regulations provided. It

> is provided further that members representing commission firms or incorporated companies shall be held responsible for any violation of this rule by the nonresident partners or stockholders of said firms or corporations.

It was alleged on the part of the State that the above rule operated in restraint of trade, and interfered with the just rights of the relator and other members of said corporation in the management and conduct of their business; that for the enforcement thereof said corporation has enacted that "any member of this exchange, or firm in which he may be a partner, violating any of the provisions of this rule shall be fined not less than $250 nor more than $1,000 for the first offense; for a second offense, not less than $500 nor more than $1,000; and if either of such fines is not paid within three days said firm shall be suspended from membership until same is paid. For a third offense they shall be expelled from membership in the exchange."

The answer, as in the case at bar, alleged *that the exchange had no property;* that its rules were adopted to carry out *the objects of its creation;* that its rules were operative upon and applied only *to such persons as had voluntarily sought and obtained membership;* that the powers of the exchange to make rules, and the validity of its rules establishing uniform rates of commission to be charged by its members, and determining that they might deal as live stock commission merchants only with members of the exchange, had already been inquired into in the supreme court of Illinois and sustained, both in proceedings by quo warranto and by injunction, the

judgment in the latter case being affirmed both by the appellate and supreme courts.

The answer further alleges that many such conditions formerly existed which the rule as to solicitors would be calculated to prevent; among others, as tending to *destructive rivalry* in the number of solicitors who are sent out into the country by members to solicit shipments of live stock to their respective employers, amounting to *a war of solicitation* by competing houses, in which those unable to carry it on were *defeated* and *driven out of business*, and business *demoralized* and left in the hands of the victors in the war; that *dishonest* and *irresponsible* and *disreputable* solicitors were employed, who used dishonest, irresponsible, and disreputable methods, and misrepresented the character and credit of rivals; that the business of commission men is confidential, and based on a trust relation, rendering it difficult to ascertain and prove the acts of dishonest solicitors, but that such acts *bring discredit on the entire trade*, and often brought on bitter disputes between members, and led to the *sale of diseased live stock;* that the *rules requiring uniformity in the rates of commission and forbidding rebates of commission* to shippers were frequently violated by commission merchants, who resorted to the device of appointing consignors as *solicitors* of their own shipments, and paying to shippers rebates of commission, under the *guise of compensation* for services as solicitors, and that the appointment and payment of compensation to alleged solicitors was also used as a *collusive device* by money lenders to cover usurious loans to commission merchants, and by

railway employees to cover extortion and unjust discrimination in the use of transportation facilities; that these rules in question would *tend to prevent these evils* and to settle disputes and *promote uniformity and cooperation among the members;* that membership is a *voluntary matter,* and that *any dissatisfied member can withdraw at any time;* that each member, by joining the association, freely and voluntarily surrendered a portion of his natural liberty in the methods of doing this particular business, in order to secure the *greater advantages of cooperation, uniformity, mutual protection, the settlement of disputes, and exclusion of the disreputable methods and diseased products from the business.*

The court said:

> Under this rule of the common law, the right of the *laborer* to dispose of his skill and industry, and contract in reference for the same with whom he pleased and at such contract rates as might be agreed on was recognized and not allowed to be *trammeled with restrictions* which interfered with *individual action and liberty.* Combinations and associations of men have *no right to place restrictions* upon the right of an individual *to contract and engage in business,* employing such means and agencies as are not prohibited by law. *The natural flow of trade and commerce must be unrestricted,* and men engaged therein may *accelerate* its current by all means not unlawful. To this end men engaged in trade and commerce may *advertise, employ men to solicit business, and offer rewards and inducements to secure trade without violating the law of the land,* and in so doing are exercising a right which is in the interest of the public, because *competition* can not be *hostile* to public interest. Efforts to *prevent competition,* to restrict

individual effort and freedom of action in trade and commerce are *restrictions hostile to the public welfare*, not consonant with the spirit of our institutions, and in *violation of law*.

We held in *Frorer* v. *People* (141 Ill., 171): "The privilege of contracting is both a liberty and a property right, and, if A is *denied* the right to contract and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C, and D are still allowed by the law to employ, it is clear that he is *deprived* of both liberty and property to the extent that he is thus denied the right to contract. Our Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law. And says Cooley: 'The man or the class forbidden the acquisition or enjoyment of property in the manner permitted the community at large would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness.'"

It was also held in *More* v. *Bennett* (140 Ill., 69): "Whatever may be the *professed objects of the association*, it clearly appears, both from its constitution and by-laws, and from the averments of the declaration, that *one of its objects*, if not its *leading* object, is to *control the prices* to be charged by its members for *stenographic work* by restraining all *competition* between them. Power is given to the association to fix a *schedule of prices* which shall be *binding* upon all of its members, and not only do the members, by assenting to the constitution and by-laws, agree to be *bound* by the schedule thus fixed, but their *competition with each other*, either by taking or offering to take a less price, is punishable by the *imposition of fines*, as well as by such other disciplinary measures as associations of this character may adopt for

the enforcement of their rules. The rule of public policy here involved is closely analogous to that which declares illegal and void contracts in *general restraint of trade*, if it is not, indeed, a subordinate application of the same rule. As said by Mr. Tiedeman: 'Following the reason of the rule which prohibits contracts in restraint of trade, we find that it is made to prohibit all contracts which in any way restrain the *freedom of trade* or diminish *competition*, or regulate the price of commodities or services.'"

In other jurisdictions the rule is the same.

In *Rex* v. *Wardens of Coopers Co.* (7 Term R., 543) it was held that a by-law limiting the *number of apprentices* which any member of the company might take was void.

In the case of *Tailors of Ipswich* (11 Coke, 53), a corporation known as the Tailors of Ipswich enacted a by-law to prohibit any tailor from exercising his trade *until he had presented himself before the corporation and proved that he had served seven years as an apprentice*. This by-law was held *void*, as being in restraint of trade. See also *Society* v. *Fell* (Willes, 334). Sustaining the same proposition are *Stanton* v. *Allen*, 5 Denio, 434; *People* v. *Fisher*, 14 Wend., 9; *Norris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St., 173; *People* v. *Medical Soc. of Erie*, 24 Barb., 570.

A case similar to that now under consideration was before the court of appeals of Kentucky. (*Huston* v. *Rentlinger*, 15 S. W., 867.) There the Louisville Board of Underwriters passed a by-law which, among other provisions, prohibited a local company from employing more than *one solicitor*, and regulated the manner in which the salary of such solicitor was to be paid. For a violation of this by-law the offending member of that board forfeited all rights as a member of the association. A local company,

which had employed more than one solicitor, sought to enjoin the enforcement of the forfeiture, on the ground that the association *had no authority to control the members in the employment of solicitors, etc.* A *decree was entered* in accordance with the *prayer of the bill*, which, on appeal, was affirmed, the court saying:

"The majority of the members, *under the guise of producing harmony in this business association*, have taken from their individual members the right to determine how many men they shall employ in their private business, and then only such as the association may think fit for the position. Nor can they employ a solicitor for a less period than six months, or offer a solicitor employment within twelve months after the solicitor has severed his connection with any member; are compelled to discharge those in their employ, if they have more than one; and, if these by-laws are enforced, have *placed their business under the control of the majority vote of the association*—a power the exercise of which was not given by the fundamental law of the order, and doubtless not contemplated when the association was formed. * * * The common-law rule, recognized and adopted when business relations were not so multiplied and extensive as now, and when less necessity existed for enforcing it, *condemned all such restrictions upon trade and business intercourse* with men as is found to exist in this case. The right of one to control his own property as he pleases, and *to employ those necessary to aid him in his business upon such terms as may be agreed upon*, when not in violation of the law of the land, is the rule of the common law; and the right of the laborer to dispose of his skill and industry to whom he pleases, and for the price agreed on, is embraced within the same rule.

> In all classes of business the employer and employee should be allowed *to contract with each other unrestrained by others* who may demand that the one shall give more or the other receive less, and, as a general rule, when restrictions are placed on their right by combinations or associations of men, they will be regarded as *violation of law* and *void*."
>
> The by-law in this case is a *restriction* on *freedom of trade and business*. It *trammels competition*, and prohibits an individual from *contracting* and *engaging in business* and using such agencies and means as he may desire which are not hostile to general law. It is not required for a corporate purpose, nor is it included within the purposes declared in the certificate of incorporation. It was therefore unlawful, as this organization had no right to exercise the power of enacting it under its franchise. *Attempts to place restrictions on trade and commerce and fetter individual liberty of action by preventing competition are hostile to public welfare and affect the interests of the people.* Such an attempt by a corporation is an abuse of its corporate franchise. Public policy requires that corporations, in the exercise of powers, must be confined strictly within their charter limits, and must not be permitted to exercise powers beyond those expressly conferred.

In *Huston* v. *Rentlinger* (Ky.), (15 S. W., 867), speaking of a similar by-law, the court said:

> We do adjudge that the restraint placed upon these appellees by the by-laws of the association as to the *number of solicitors* they may employ and the time of employment, and the compensation to be paid them, and forbidding them to contract with a solicitor, so as to make his pay depend on the number of risks he procures, and forbidding an employment of a solicitor who has severed his connection

with another member, are each and all in violation of law, and the judgment of the chancellor, giving the appellee all the rights pertaining to other members of the association, must be affirmed.

We are quite willing to adopt the definition of "liberty" given by appellants at page 218 of their brief, as follows:

> The liberty mentioned in the Constitution means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all legal ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose *to enter into all contracts* which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned. (*Allgeyer* v. *Louisiana*, 165 U. S., 578, 589.)

The rule in question is illegal and void as in restraint of trade, and is violative of the inalienable right guaranteed by the Constitution to every citizen to contract and to carry on his business as he will, consistent with existing laws. Operating as it does upon commerce among the several States, it is within the terms of the act of July 2, 1890.

III.

THE BY-LAWS OF THE DEFENDANTS DISCRIMINATE AGAINST THE PRODUCTS OF VARIOUS STATES AND TERRITORIES, AND SO ATTEMPT TO REGULATE INTERSTATE COMMERCE.

Section 8 of rule 9 of the rules and by-laws of the Kansas City Live Stock Exchange is as follows:

> SEC. 8. No firm shall handle the business of a nonresident commission house for less than full commissions, except that said consignments be made direct to said nonresident commission house from one of the following-named markets: Chicago, Ill.; East St. Louis, Ill.; St. Louis, Mo.; Omaha, Nebr.; Wichita, Kans.; Denver, Colo.; Pueblo, Colo.; St. Joseph, Mo.; Sioux City, Iowa; Peoria, Ill.; Milwaukee, Wis., and Fort Worth, Tex.

This section is not only an attempt to regulate interstate commerce between the States of Illinois, Missouri, Nebraska, Kansas, Colorado, Iowa, Wisconsin, and Texas, but is a discrimination in favor of consignments coming from the markets above named and a discrimination against other localities. In other words, a consignment of cattle coming from any point in Texas, except Fort Worth, must pay full commissions, and a consignment from that city will be handled for less than full commissions; a consignment coming from Wichita, Kans., will be handled for a less commission than a consignment from some point in New Mexico; a consignment from St. Joseph, Mo., would be handled on a less commission than a consignment from Montana.

It would be beyond the power of the State of Missouri or the State of Kansas to make any regulation of this character, because such a regulation is within the exclusive province of Congress. In questions of interstate commerce, no State or individual or combination of individuals has the right to discriminate against products by reason of their foreign origin.

In *Welston* v. *Missouri* (91 U. S., 275) the statute of the State was as follows:

> Whoever shall deal in the selling of patent or other medicines, wares, or merchandise, except books, charts, maps, and stationery, which are not the growth, produce, or manufacture of this State, by going from place to place to sell the same, is declared to be a peddler.

Other sections prohibited a person from dealing as a peddler without a license, and imposed a penalty therefor. This provision of the State statute was held to be void, being in contravention of the Constitution of the United States, which invests Congress with the power to regulate commerce among the States.

The court says (p. 282):

> It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of *discriminating legislation by reason of its foreign character*. That power protects it, even after it has entered the State, from any burdens imposed by reason of its foreign origin. The act of Missouri encroaches upon this power in this respect, and is, therefore, in our judgment, unconstitutional and void.

In *Guy* v. *Baltimore* (100 U. S., 434) an ordinance of the city of Baltimore required that vessels laden with

the products of other States should be required to pay for the use of the public wharves of that city, fees which were not exacted from vessels landing there with products of Maryland. It was held that this ordinance was in conflict with the Constitution of the United States.

The court says (p. 439):

> In view of these and other decisions of this court, it must be regarded as settled that no State can, consistently with the Federal Constitution, *impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory.*

In *Walling* v. *Michigan* (116 U. S., 446) a State statute imposed a tax upon persons who, not residing or having their principal place of business within the State of Michigan, should engage there in the business of selling or soliciting the sale of intoxicating liquors to be shipped into the State from places without it, but did not impose a similar tax upon persons selling or soliciting the sale of intoxicating liquors manufactured within the State. It was held that this act was a regulation in restraint of commerce and repugnant to the Constitution of the United States.

The court says (p. 454):

> The single question now before us for consideration is whether the statute of 1875 is repugnant to the Constitution of the United States. Taken by itself, and without having reference to the act of 1881, it is very difficult to find a plausible reason for holding that it is not repugnant to the Constitution. It certainly does impose a tax or duty on

persons who, not having their principal place of business within the State, engage in the business of selling, or of soliciting the sale of, certain described liquors, to be shipped into the State. If this is not *a discriminating tax* levied against persons for selling goods brought into the State from other States or countries, it is difficult to conceive of a tax that would be discriminating. * * *

A discriminating tax imposed by a State *operating to the disadvantage of the products of other States* when introduced into the first-mentioned State is, in effect, a regulation in *restraint of commerce among the States*, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States.

In *Pickard* v. *Pullman Southern Car Company* (117 U. S., 34) it is held that the act of the legislature of Tennessee imposing a privilege tax of $50 per annum on every sleeping car or coach used or run over a railroad in Tennessee and not owned by the railroad on which it is run or used is void so far as it applies to the interstate transportation of passengers carried over railroads in Tennessee, into or out of or across that State, in sleeping cars owned by a corporation of Kentucky and leased by it for transportation purposes to Tennessee railroad corporations, the latter receiving the transit fare and the former the compensation for the sleeping accommodations.

In *In re Schechter* (63 Fed. Rep., 695) the following ruling was made by Sanborn, circuit judge:

A State statute requiring every person selling fruit trees or other nursery stock grown outside the State to file an affidavit with the secretary of state

and a bond of $2,000, and to exhibit to each purchaser a certificate of the secretary that he has complied with these provisions is unconstitutional, as imposing *vexatious and annoying restrictions upon interstate commerce*, and can not be upheld on the ground that it is intended to protect the citizens of the State from the fraudulent representations of such dealers.

In *Aultman, Miller & Co.* v. *Holder* (63 Fed. Rep., 467) there was under consideration the statute of Michigan, which provided that every foreign corporation which shall hereafter be permitted to transact business in this State shall pay to the secretary of state the franchise fee of one-half of 1 mill upon each dollar of the authorized capital stock. The act was held void as a regulation of interstate commerce, although the foreign corporation maintained a warehouse, depot, and repair shop in Michigan.

In *Brimmer* v. *Rebman* (138 U. S., 78) a statute of Virginia, entitled "An act to prevent the selling of unwholesome meat," declared it to be unlawful to offer for sale, within the limits of that State, any beef, veal, or mutton from animals slaughtered 100 miles or more from the place at which it is offered for sale, unless it has been previously inspected and approved by local inspectors appointed under that act. It was provided that the inspector should receive as his compensation 1 cent per pound, to be paid by the owner of the meats. The act did not require the inspection of fresh meats from animals slaughtered within 100 miles from the place in Virginia at which such meats were offered for

sale. It was held that the act was void, as being in restraint of commerce between the States, and as imposing a *discriminating* tax upon the products and industries of some States in favor of the products and industries of Virginia.

It was also held that the owner of meats from animals slaughtered 100 miles or over from Virginia has the right to compete, in the markets of that State, upon *terms of equality with the owner of meats from animals slaughtered in that State or elsewhere* within 100 miles from that place at which they are offered for sale.

The court says (p. 81):

> Is the statute now before us liable to the objection that, by its necessary operation, it interferes with the enjoyment of rights granted or secured by the Constitution? This question admits of but one answer. The statute is, in effect, a prohibition upon the sale in Virginia of beef, veal, or mutton, although entirely wholesome, if from animals slaughtered 100 miles or over from the place of sale. We say prohibition, because the owner of such meats can not sell them in Virginia until they are inspected there; and being required to pay the heavy charge of 1 cent per pound to the inspector, as his compensation, he can not compete, upon equal terms, in the markets of that Commonwealth with those in the same business whose meats of like kind, from animals slaughtered within less than 100 miles from the place of sale, are not subjected to inspection at all. Whether there shall be inspection or not, and whether the seller shall compensate the inspector or not, *is thus made to depend entirely upon the place where the animals from which the beef, veal, or mutton*

is taken were slaughtered. Undoubtedly, a State may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police power, or of exacting inspection laws, *make discriminations against the products and industries of some of the States in favor of the products and industries of its own or of other States.* The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to *compete in the markets* of Virginia upon *terms of equality* with the owners of like meats from animals slaughtered in Virginia or elsewhere within 100 miles from the place of sale. Any *local regulation* which, in terms or by its necessary operation, *denies this equality* in the markets of a State is, when applied to the people and products or industries of *other States*, a direct burden upon commerce among the States, and, therefore, *void.* Citing *Welton* v. *Missouri* (91 U. S., 275, 281); *Railroad Co.* v. *Husen* (95 U. S., 465); *Minnesota* v. *Barber* (136 U. S., 313, 319).

See also *Crutcher* v. *Kentucky* (141 U. S., 47); *Minnesota* v. *Barber* (136 U. S., 313).

If it is beyond the power of any State or municipal corporation to discriminate against the products of any foreign State or locality, how is it possible for a combination of men so to do, in the face of the act of July 2, 1890? Is not this section of the by-laws "a contract or combination in restraint of trade or commerce among the several States?"

The inhabitants of New Mexico or Montana have the right, under the Constitution, to have their cattle placed upon the market in Kansas City without any discrimination against them by reason of their origin.

The section above quoted undertakes to deny the right of all except those in a few favored localities to bring their cattle into the market at Kansas City *without being compelled to pay a greater commission*. The amount of the commission is paid by the owner of the cattle, and the greater the commission the less are the net proceeds of his shipment. The section, therefore, is not only an attempt to regulate commerce among the States, but is an actual discrimination in favor of certain localities in foreign States and against shippers in other localities in foreign States, and, for both reasons, is within the prohibition of the antitrust law.

IV.

THE BY-LAWS OF THE DEFENDANTS PROVIDING FOR MINIMUM COMMISSIONS OPERATE UPON AND TEND TO RESTRAIN INTERSTATE COMMERCE.

Sections 1 to 7 of rule 9 of the rules and by-laws of the Kansas City Live Stock Exchange are as follows:

> SECTION 1. The commissions charged by members of this association for selling live stock *shall not be less* than the following-named rates:
>
> SEC. 2. Six dollars per carload for single-deck carloads of hogs or sheep, and ten dollars per carload for double-deck carloads of same: *Provided*, Members of this exchange may, after charging commissions as above provided, pay a regular sheep

salesman on these yards a sum of money contingent on number of sheep sold; said sheep salesman may be in the employ of other members of the exchange.

SEC. 3. Fifty cents per head for cattle of all ages. In carloads of twenty-four or more, not more than twelve dollars per carload, ten dollars per single-deck carload, and eighteen dollars per double-deck carload of veal calves.

SEC. 4. Fifty cents per head for cattle, and twenty-five cents per head for calves, and ten cents per head for hogs and sheep in mixed carloads, but not to exceed twelve dollars per carload. Fifty cents per head for cattle, and twenty-five cents per head for calves driven into the yards, and ten cents per head for hogs and sheep for sixty head or less; more than that number shall be charged for at carload rates.

SEC. 5. Fifty cents per head for buying cattle for stockers or feeders: *Provided*, Such charges shall not exceed twelve dollars per carload; six dollars per single-deck carload for buying sheep, and ten dollars per double-deck carload. All purchases paid for by a commission house or shipping clearance made by same shall be deemed a purchase, and charged for as above provided.

SEC. 6. Not less than four dollars per single-deck, and five dollars per double-deck carload for buying live hogs, and not less than three cents per head for hogs bought by the head.

SEC. 7. No member or commission firm or corporation represented herein shall do business for a yard trader or speculator on this market for less charges than one-half the regular commission.

SEC. 12. Any member of this exchange, or firm or corporation in which he may be a partner, violating any of the provisions of this rule shall be fined not less than $500 nor more than $1,000 for the first

offense; if said fine be not paid within three days said member or firm may be suspended from membership until same is paid. For a second offense said member or firm may be expelled from membership in the exchange.

A. Whether these rules, fixing the limit of commissions to be charged by the defendants, are in restraint of trade will be considered hereafter under a separate heading. We will first consider whether they operate upon "trade or commerce among the several States."

It must be borne in mind that the defendants perform the duties of commission men in selling cattle which arrive at the Kansas City stock yards from distant States and Territories *for immediate sale and slaughter*, or for immediate shipment to some other market, and also in selling such cattle *for immediate slaughter for foreign markets and for immediate shipment to foreign markets*. In other words, the *owner of cattle* in foreign States sells his property at the Kansas City stock yards through his *agent*, the commission man.

It must also be borne in mind that, under the testimony, the commission men habitually loan money to stock raisers in other States and Territories, on the security of chattel mortgages, with an agreement that the cattle, when ready for market, shall be shipped to and sold by them; and that, in other cases, it is customary for the shipper to secure an advance upon the shipment by drawing a draft upon his commission man, with bill of lading attached, which draft is discounted by the local bank at the place of the shipment and forwarded to the commission man at Kansas City and there paid by

him, by which act the *commission man becomes to all intents and purposes the owner and purchaser of such cattle.* (*Union Stock Yards Bank* v. *Gillespie*, 137 U. S., 415.)

It must also be remembered that the commission men are actively engaged in *soliciting shipments* from various parts of the United States, *contracting for the making of such shipments*, the making of *loans*, the making of *advancements* on such shipments, etc.

The rules of the Live Stock Exchange operate upon and directly affect this class of business, and the question as to whether it is interstate commerce will now be considered.

In the first place, what is trade or commerce?

It is said in *The Daniel Ball* (10 Wall., 557):

> Whenever a *commodity has begun to move, as an article of commerce, from one State to another*, commerce in that commodity between the States has commenced.

It is thus defined in *Welton* v. *Missouri* (91 U. S., 275):

> Commerce is a term of largest import. It comprehends *intercourse for the purposes of trade in any and all its forms*, including the *transportation, purchase, sale, and exchange of commodities* between the citizens of our country and the citizens or subjects of other countries and between the citizens of different States. The power to regulate it embraces all the *instruments by which such commerce may be conducted.*

Commerce is thus defined in *Gloucester Ferry Co.* v. *Pennsylvania* (114 U. S., 196):

> Commerce among the States consists of *intercourse and traffic between their citizens*, and includes the

> transportation of persons and property, and the navigation of public waters for that purpose, as well as the *purchase, sale, and exchange of commodities.* The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to *prescribe the rules by which it shall be governed*, that is, the *conditions upon which it shall be conducted;* to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the *instrumentalities by which that commerce may be carried on*, and *the means by which it may be aided and encouraged.* The subjects, therefore, upon which the power may be exerted are of infinite variety.

In the very recent case of *United States* v. *E. C. Knight Company* (156 U. S., 13), the court says:

> The regulation of commerce applies to the subjects of commerce and not to matters of internal police. *Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit*, may be regulated, but this is because they form part of *interstate trade or commerce.*

In *County of Mobile* v. *Kimball* (102 U. S., 691, 702), it is said that—

> Commerce with foreign countries and among the States, strictly considered, consists in *intercourse and traffic*, including in these terms navigation and the *transportation and transit of persons and property*, as well as the *purchase, sale, and exchange of commodities.*

The power to regulate commerce among the several States has been applied in many cases and to many varying

and different groups of facts. When an article once *starts to move*, as a subject of interstate commerce, it is within the *protection of Federal control;* and this control *does not cease* when the article reaches the boundary line of a State, but *continues* and *protects the article* from State burdens and restrictions until it has been sold and, *by that act, has become mingled with the mass of property in the State.* The action of any power, whether State or municipal, or a combination of individuals, which undertakes to *intercept* the article of commerce and impose a *burden* or *restriction* upon it between the time of its arrival in the State and its being sold, and so becoming mingled with the mass of property within the State, is repugnant to the Federal Constitution.

In the present instance, great numbers of cattle and other live stock are shipped from Western States and Territories to the Kansas City market *for immediate sale and slaughter.* The defendant commission men are *engaged in promoting this trade.*

In the language of the lower court:

> *They reach out over many States and Territories, by their solicitors and advertisements, and gather in for sale and slaughter millions of cattle, sheep, and hogs; and their rules and regulations cover the entire business and extend over the whole field of operation.*

The great packing houses at Kansas City are the purchasers from the commission men, and their purchases are made for the purpose of shipping the dressed product either to foreign countries or to sister States. Great numbers of cattle coming from distant States are started on their interstate journey for Chicago with the privilege

of stopping at Kansas City, to be sold there if the market is favorable, and if not, to continue their journey to Chicago.

The questions to be considered now are, (1) are the cattle, shipped from a foreign State and arriving at the stock yards for immediate sale, or shipment to another market, subjects of interstate commerce while in the stock yards, before they are sold? *In other words, may the owner of cattle, residing in a distant State or Territory, bring them to the Kansas City market and there sell them, through his agent, without being subject to any restriction or limitation, except such as may emanate from the General Government?* (2) Are the *traffic and intercourse* between the commission men at the stock yards and the owners of the cattle in distant States and Territories *commerce among the several States?* (3) Is the business of the defendant commission men to be regarded as interstate commerce by reason of the location of the stock yards upon the State line and the manner in which their business is done resulting therefrom?

Taking up the first question, we say it must be conceded that the *right to import* from a sister State, implies the *right of the importer to sell, free from burden or restriction.* The laws of the United States *guarantee* to the owner of cattle in the State of Texas the right to introduce them into the State of Missouri or the State of Kansas; but such right would be of *no avail* unless the owner be permitted, as an incident to such right, *to sell them.* The States of Missouri or Kansas can not prevent the importation of such cattle, *and neither can they pre-*

vent the sale thereof by the importer, as an incident to such right. Nor can a combination of persons exercise a power which is denied to sovereign States.

That the right to import includes, *by necessary implication,* the right *to sell in the original package* is apparent from a glance at the authorities.

In *Bowman* v. *Railway Company* (125 U. S., 465) the court, after holding a State statute forbidding importation of liquors to be void, says, on page 499:

> It is easier to think that the right of importation from abroad, and of transportation from one State to another, *includes*, by necessary implication, *the right of the importer to sell in unbroken packages at the place where the transit terminates*, for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce *which consists in the sale and exchange of the commodities transported.* Such, indeed, was the point decided in the case of *Brown* v. *Maryland* (12 Wheat., 419) as to foreign commerce, with the express statement, in the opinion of Chief Justice Marshall, that the conclusion would be the same in a case of commerce among the States.

Field, J., in his concurring opinion, says, on pages 504, 505:

> That the *right of importation* carries with it *the right to sell the article imported does not appear to me doubtful.* Of course I am speaking of an article that is in a healthy condition, for when it has become putrescent or diseased, it has ceased to be an article of commerce, and it may be destroyed or its use prohibited. To assert that, under the Constitution of the United States, the importation of an article of

commerce can not be prohibited by the States, and yet to hold that *when imported its use and sale can be prohibited*, is to declare that the right which the Constitution gives is a *barren one*, to be used only so far as the burden of transportation is concerned, and to be *denied so far as any benefits from such transportation are sought*. The framers of the Constitution never intended that *a right given* should not be *fully enjoyed*. In *Brown* v. *Maryland* (12 Wheat., 419, 446) Chief Justice Marshall, in delivering the opinion of the court, speaking of the commercial power of Congress, and after observing that it is coextensive with the subject on which it acts, and can not be stopped at the exterior boundary of a State, but must enter its interior, said: "If this power reaches the interior of a State, and may be there exercised, it must be capable of *authorizing the sale of those articles which it introduces*. Commerce is *intercourse;* one of its most ordinary ingredients is *traffic*. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficiency should be complete, *should cease at the point when its continuance is indispensable to its value*. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a *sale* of the thing imported? *Sale is the object of importation, and it is an essential ingredient of that intercourse of which importation constitutes a part*. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to *authorize the importer to sell*. The power claimed by the State is, in its nature, in conflict with that given to Congress, and the greater

> or less extent in which it may be exercised does not enter into the inquiry concerning its existence. We think, then, that if the power to authorize a sale exists in Congress, the conclusion that *the right to sell is connected with the law permitting importation*, as an inseparable incident is inevitable." And the Chief Justice added: "We suppose the principles laid down in this case to apply equally to importations from a sister State" (p. 449).

Again, Field, J., says on pages 506, 507:

> So in the present case it is perhaps impossible to state any rule which would determine in all cases where the right to sell an imported article under the commercial power of the Federal Government ends and the power of the State to restrict further sales has commenced. Perhaps no safer rule can be adopted than the one laid down in *Brown* v. *Maryland, that the commercial power continues until the articles imported have become mingled with and incorporated into the general property of the State and not afterwards.*

In *Leisy* v. *Hardin* (135 U. S., 100), where a statute of Iowa prohibiting the sale of liquors was held void as to an importer on account of its interference with interstate commerce, the court says, on page 119:

> The doctrine now firmly established is, as stated by Mr. Justice Field, in *Bowman* v. *Chicago, etc., Railway Co.* (125 U. S., 507), that where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers,

and docks, and the like, which can be properly regulated only by *special provisions* adapted to their localities, the State can act *until Congress interferes and supersedes its authority;* but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all of the States, such as *transportation between the States, including the importation of goods from one State into another*, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed, and the property imported has mingled with and become a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the *disposition* of the import until thus mingled.

Again, after citing sundry decisions, the court says, on pages 122, 123:

These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing which they exercise powers not surrendered to the National Government; but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, *the receipt of an imported commodity or its disposition* before it has ceased to become an article of trade between one State and another or another country, and this it comes in conflict with

a power which, in this particular, has been exclusively vested in the General Government, and is therefore void.

Again the court says on page 124:

> The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer, which they sell in original packages, as described. Under our decision in *Bowman* v. *Chicago, etc., Railway Co., supra*, they had the right to import this beer into that State, and in the view which we have expressed, *they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State*. Up to that point of time we hold that, in the absence of Congressional permission to do so, *the State had not power to interfere*, by seizure or any other action, in prohibition of *importation and sale* by the foreign or nonresident importer.

See also the recent case *In re Lebolt*, (77 Fed. Rep., 587), which follows *Leisey* v. *Hardin*.

In *In re Rahrer* (140 U. S., 545), in sustaining the validity of an act of Congress making liquors subject to State law upon arrival within the State, the Supreme Court says, on pages 55–60:

> The laws of Iowa under consideration in *Bowman* v. *Railway Company* (125 U. S., 465), and *Leisey* v. *Hardin* (135 U. S., 100), were enacted in the exercise of the police power of the State, and not at all as regulations of commerce with foreign nations and among the States; but as they inhibit the receipt of an imported commodity, or *its disposition before it had ceased to become an article of trade between one State and another* or another country and this, they amounted in effect to a regulation of such commerce.

Hence it was held that inasmuch as interstate commerce, consisting in the *transportation, purchase, sale, and exchange of commodities*, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically, or in such way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such commerce should be free and untrammeled, and therefore that the laws of Iowa referred to were inoperative in so far as they amounted to regulations of foreign or interstate commerce, in inhibiting the reception of such articles within the State, *or their sale upon arrival in the form in which they were imported there from a foreign country or another State*.

Again the court says, on pages 562, 563:

We inquire, then, whether fermented, distilled, or other intoxicating liquors or liquids transported into the State of Kansas and there offered for sale and sold, after the passage of the act, became subject to the operation and effect of the existing laws of that State in reference to such articles. It is said that this can not be so, because, by the decision in *Leisey* v. *Hardin*, similar State laws were held unconstitutional, in so far as they prohibited the sale of liquors by the importer in the condition in which they had been imported. In that case, certain beer imported into Iowa had been seized in the original packages or kegs, unbroken and unopened, in the hands of the importer, and the supreme court of Iowa held this seizure to have been lawful under the statutes of the States. We reversed the judgment, upon the ground that the legislation to the extent indicated, that is to say, as construed to apply to importations into the State from without and to permit the seizure of the

> articles before they had, *by sale or other transmutation, become a part of the common mass of property of the State*, was repugnant to the third clause of section 8 of article 1 of the Constitution of the United States, in that it could not be given that operation without bringing it into collision with the implied exercise of a power exclusively confided to the General Government.

In *In re Sanders* (52 Fed. Rep., 802), Goff, circuit judge, held void an act prohibiting sale of seed packages unmarked by the date when such seed were grown with respect to the selling of seed in the original packages imported from another State.

In *In re Minor* (69 Fed. Rep., 333), where an act of West Virginia, exacting the payment of a license fee for the sale of cigarettes imported from another State and sold in the original packages, either by the importer or by an agent, was under consideration, the court says:

> The right to purchase in one State carries with it the *right to sell the article so purchased in another State regardless of State laws*, and independent of local interests and jealousies. Were this not so, the commerce between the States could be and in many instances would be entirely destroyed. *It is only by the sale of the imported articles that it becomes mingled with the other property in the State.*

The leading case of *Leisy* v. *Hardin*, which upholds the right of importation and sale free from regulations that may be imposed by any except the Federal power, is reaffirmed in the latest case upon the subject, *Scott* v. *Donald* (165 U. S., 58, 95), in the following language:

> In *Leisy* v. *Hardin* (135 U. S., 100) it was recognized that ardent spirits, distilled liquors, ale, and

beer are subjects of exchange, barter, and traffic like any other commodity in which a right of traffic exists, and that being thus articles of commerce, a State can not, in the absence of legislation on the part of Congress, prohibit their importation from abroad or from a sister State, *nor when imported prohibit their sale by the importer;* and, accordingly, it was held that a statute of the State of Iowa prohibiting the sale of any intoxicating liquors, except for pharmaceutical, medicinal, chemical, or sacramental purposes, and under a license from a county court of the State, was, *as applied to a sale by the importer,* and in the original packages or kegs, unbroken and unopened, of such liquors manufactured and brought from another State, *unconstitutional and void,* as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

In *In re May* (82 Fed. Rep., 422) it is said:

> It is claimed that the right to ship cigarettes from the State of New York to that of Montana carries with it the right to sell the same in Montana in the original packages. There is no doubt but that this is the established doctrine of the Federal courts.
>
> *Guckenheimer* v. *Sellers*, 81 Fed. Rep., 997.
>
> *Donald* v. *Scott*, 76 Fed. Rep., 559.
>
> *State of Iowa* v. *MacGregor*, 76 Fed. Rep., 956.
>
> *State* v. *Lagarde*, 60 Fed. Rep., 186.

As said by the lower court in this case (82 Fed. Rep., 541):

> This live stock is shipped from different States *for immediate sale*, and if the market at Kansas City is not satisfactory, it is to be shipped to another market. *I can not believe it ceases to be the subject of interstate commerce when unloaded into the stock yards.*

In *Cotting* v. *Kansas City Stock Yards Co.* (82 Fed. Rep., 842), in speaking of these very Kansas City stock yards, the court said:

> There can be no doubt that *all live stock shipped from other States than Kansas and Missouri to these yards is the subject of interstate commerce*, nor can there be any doubt that shipments of stock originating in Kansas and Missouri and consigned to other States come under the same designation.

In the same case (82 Fed. Rep., 850 (852)), Judge Thayer said:

> *Much business is transacted at the Kansas City stock yards consisting in the purchase and sale of live stock shipped to that market from other States than Kansas, which is interstate commerce.*

Speaking of the right of the State of Kansas to limit the charges to be made by the stock yards, Judge Thayer continues:

> The court is of the opinion that this power to fix a limit to such charges is not of such an exclusive character as to prevent the State of Kansas from exercising a similar power, *in the absence of any legislation on the subject by Congress.*

Bearing in mind that the commission man is the agent of the importer, and that the cattle when sold by the commission man are in process of being *sold* by the *importer*, it is, we submit, clear that when the sale is made the cattle, coming from distant States, are then subjects of interstate commerce. In other words, the rules and by-laws of the defendants *operate upon and affect commerce between the several States.*

It must also be remembered that the contract between the defendants, including the rules fixing minimum charges, is *prospective in its operation.* It is designed to affect the sale of cattle and other live stock which may *thereafter* be shipped into the State. It is an *agreement* among the defendants that cattle located in the sister States tributary to the Kansas City market *shall be subject to a charge or burden of 50 cents per head when they shall, in the course of time, be shipped to the Kansas City market.*

It is impliedly conceded by the defendants' answer, and is amply established by the affidavits, that the defendant commission men sell all of the stock that is sold on commission at the Kansas City stock yards, and that it is their purpose and the effect of their organization to *prevent any other person from selling stock on commission at those yards.* It is true that in one sense the owner of the stock may accompany it and sell it himself, but this is true only in *theory*—in the same way that any man, theoretically, may prosecute or defend his own case in the courts without the aid of an attorney. In *actual practice* and *in fact* no one can sell stock on commission at the Kansas City stock yards except the defendants, and this is amply borne out by the affidavits.

If these defendants, composing the Kansas City Live Stock Exchange, can arbitrarily fix a commission to be paid for the services to be performed by them in selling live stock, *what is to prevent their fixing the charge at $5 per head instead of 50 cents per head?* What is to prevent their passing a resolution fixing a charge of $5 per

head on cattle coming from Texas, $6 per head on cattle coming from Colorado, and 50 cents per head on cattle coming from Kansas or Missouri? What is to prevent their excluding Montana cattle entirely from the Kansas City market? Would any one hesitate to say that such acts would be a contract, combination, or conspiracy in restraint of trade or commerce among the several States? *The principle is the same whether the charge is fixed at 50 cents or $5.* It is, after all, a question of *power*.

B. The relation of the commission men to their customers and patrons in other States and Territories must also be considered.

The commission men not only buy and sell cattle originating in distant States and Territories for shipment to points beyond the States of Kansas and Missouri, but, according to the uncontradicted evidence, they are also engaged *in making loans* to the cattle raisers, the loans being secured upon the cattle purchased with the proceeds of the loan and by agreement that the cattle, when ready for market, shall be shipped to the Kansas City yards and sold by the commission men making the loan. The commission men also, as shown by the uncontradicted evidence, are accustomed to making advancements upon the consignments of stock to them, by means of the payment of a draft drawn by the shipper at the time of the shipment.

It is submitted that this business constitutes *intercourse and traffic between the citizens of different States.* The Federal regulation of commerce applies (*United States* v. *E. C. Knight Co.*, 156 U. S., 13) to (1) contracts to buy, sell or exchange goods to be transported among the several

States; (2) the transportation and its instrumentalities, and (3) the articles bought, sold, or exchanged for the purpose of such transit among the States or put in the way of transit.

If the commission man purchases cattle located in Montana, to be transported thence to Kansas City, the making of the contract of sale is interstate commerce, as well as the transportation of cattle and instrumentalities used in such transportation; and so are the cattle bought for such interstate transit. The practice of the commission men in making loans, advancing money, taking mortgages, having the cattle shipped to them in their own names *is in law a purchase of the cattle*. Thus, in *Union Stock Yards Bank* v. *Gillespie* (137 U. S., 415), one Gillespie advanced money for the purchase of cattle, and was held to be the owner thereof so far as necessary to protect his rights.

Mr. Justice Brewer said:

> In equity the Gillespies may properly be considered the *owners*. They paid for the cattle; the orders for possession, equivalent to bills of sale, were in their name; they controlled the shipments, and until their money advanced and stipulated profits were received *they were equitably the owners and in control*.

If the defendant commission men were engaged in soliciting shipments of cattle from Europe, for example, and were engaged in making advances upon such shipments, and paying drafts drawn in the foreign country against the shipments, would any one say they were engaged in domestic commerce? and yet, if their business

extends beyond the State line they "may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool." (*Covington Bridge Co.* v. *Kentucky*, 154 U. S., 204.) Such business, we submit, can be regulated alone by Congress, acting under the power of the Constitution. No State or combination of individuals can regulate such intercourse and such traffic.

Many cases have arisen and have become the subject of adjudication in which the facts are somewhat similar to those in the case at bar, and a consideration of those cases may serve to throw light upon the present controversy.

In *Gloucester Ferry Company* v. *Pennsylvania* (114 U. S., 196), the ferry company was incorporated under the laws of New Jersey, and had established a steam ferry from the town of Gloucester, in that State, to Philadelphia, across the Delaware River. At each place it had a dock or slip, on which freight and passengers were received; the one at Gloucester is owned, the one at Philadelphia is leased. The State of Pennsylvania imposed a tax upon the ferry company, the amount being a certain percentage of the dividends earned. This tax was held to be void, as the business was interstate commerce, subject to the regulation of Congress alone.

In *Philadelphia and Southern Steamship Co.* v. *Pennsylvania* (122 U. S., 326), the legislature of Pennsylvania passed an act requiring every railroad company to pay to the State treasurer, for the use of the Commonwealth, a tax of eight-tenths of 1 per cent upon the gross receipts of said company for tolls and transportation. It

appeared from the evidence that the steamship company was engaged in operating seagoing steamships, engaged in the business of ocean transportation between different States of the United States and between the United States and foreign countries, and that the gross receipts sought to be taxed were received for freight and passengers carried in said steamships on the ocean and on the navigable waters of the United States, between the State of Pennsylvania and other States of the United States. It was held by the court that the act of the legislature of Pennsylvania was void, as an attempted regulation of interstate commerce, and the case of *State Tax on Railway Gross Receipts* (15 Wall., 284) was practically overruled.

In *Hall* v. *De Cuir* (95 U. S., 485), an act of the legislature of Louisiana provided that all common carriers of passengers were forbidden to refuse admission to their conveyances or to expel therefrom any persons whomsoever, except those who refused to pay fare, etc. The plaintiff, a person of color, took passage upon the boat on her trip up the river from New Orleans, for Hermitage, a landing place within Louisiana, and being refused accommodations, on account of her color, in the cabin specially set apart for white persons, brought an action for damages. The defense was that the statute was inoperative and void, because it was an attempt to regulate commerce among the States. The court sustained the defense, and held the regulation to be unconstitutional and void.

The same principle is sustained in *Robbins* v. *Shelby County Taxing District* (120 U. S., 489).

The case of *Asher* v. *Texas* (128 U. S., 129) is similar to the one last cited. The statute of Texas provided for the levying of a tax upon every commercial traveler, drummer, salesman, or solicitor of trade, by sample or otherwise. Asher, the plaintiff, was a citizen and resident of the city of New Orleans, in Louisiana, and was engaged in Texas in the business of soliciting trade, by the use of samples, for the house for which he worked as drummer, which was located at New Orleans. It was held that the statute was repugnant to the Constitution of the United States as an attempted regulation of interstate commerce.

In *Almy* v. *California* (24 How., 169), the State of California, by its legislature, imposed a stamp tax upon bills of lading. It was held that the act was void, in so far as it affected bills of lading for the transportation of merchandise outside of the State of California.

In *Brown* v. *Maryland* (12 Wheat., 436), the State legislature, by an act, required all importers of foreign goods, by the bale or package, and other persons selling the same, by wholesale, bale or package, etc., to take out a license, for which they should pay $50, and in case of neglect or refusal to take out such license subjecting them to certain forfeitures and penalties. It was held that this act was repugnant to the Constitution of the United States, which declares that Congress shall have power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

In *Guy* v. *Baltimore* (100 U. S., 434), an ordinance of the city of Baltimore undertook to exact a license for

the use of public wharves of the city by vessels laden with products of other States, no fees being exacted from vessels landing thereat with the products of Maryland. It was held that the ordinance was void, as an attempted regulation of interstate commerce; that the protection of the Federal Constitution followed the products of foreign States into the State of Maryland, and protected them from hostile legislation.

In *Railroad Company* v. *Husen* (95 U. S., 465), the statutes of Missouri prohibited driving or conveying any Texas, Mexican, or Indian cattle into the State between the 1st day of March and the 1st day of November in each year. The statute was declared void and in conflict with the Constitution, which ordains that Congress shall have the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

In *Walling* v. *Michigan* (116 U. S., 446), the legislature of Michigan undertook to impose a tax or duty on persons who, not having their principal place of business within the State, engage in the business of selling, or of soliciting the sale of, certain described liquors, to be shipped into the State. This act was held to be void, as an attempted regulation of commerce.

In *Pickard* v. *Pullman Southern Car Company* (117 U. S., 34) the legislature of Tennessee imposed a privilege tax of $50 per annum on every sleeping car or coach used or run over a railroad in Tennessee and not owned by the railroad on which it was run or used. The court held the act void, so far as it applied to the

interstate transportation of passengers carried over railroads in Tennessee, into or out of or across that State, in sleeping cars owned by a corporation of Kentucky.

In *Wabash, St. Louis and Pacific Railway Company* v. *Illinois* (118 U. S., 557) the legislature of Illinois enacted that, if any railroad company should, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it did for a longer distance, it should be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads, from Peoria, in Illinois, and from Gilman, in Illinois, to New York, charging more for the same class of goods carried from Gilman than from Peoria, the former being 86 miles nearer to New York than the latter, this difference being in the length of the line in the State of Illinois. It was held that the act of the legislature of Illinois was an attempt to regulate interstate commerce, and was void.

In *Ex parte Loeb* (72 Fed. Rep., 657) the statute of South Carolina provided that it should be "unlawful for any person to take or solicit orders, or to receive money from other persons, for the purchase or shipment of any alcoholic beverages for or to such other persons in this State, and, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a term," etc. This act was held to be void, as an attempted regulation of interstate commerce.

In *Donald* v. *Scott* (74 Fed. Rep., 859) a South Carolina statute declared that all intoxicating liquors which

were not purchased of a State officer authorized to sell the same, and which had not been tested by the chemist of the South Carolina College and found to be chemically pure, were of a poisonous and detrimental character, and that their use as a beverage was against the morals, good health, and safety of the State. It forbade the accepting, storing, and keeping possession thereof, and made it unlawful for any consignee or other person to take from any depot or place, or to pay freight, express, or other charges thereon, and authorized their seizure by State officers wherever found. It was held that, in so far as this act applied to liquors sent into the State from other States, it was void, as an interference with interstate commerce.

This ruling is affirmed in the recent case of *Donald* v. *Scott* (165 U. S., 58).

In *In re Minor* (69 Fed. Rep., 233) the act of West Virginia provided that a certain license fee should be paid for selling cigarettes at retail. It was held that, so far as the act applied to cigarettes imported from another State and sold by the manufacturer in West Virginia in the original package, and to cigarettes manufactured in another State and by the manufacturer sent into West Virginia in the original package, for sale by the agent of the manufacturer, it was not an exercise of the police power of the State, but a regulation of interstate commerce, and therefore void.

In *Ex parte Hough* (69 Fed. Rep., 330) the act of North Carolina requiring every one, before engaging in selling pianos or organs by sample, list, or otherwise, in that State, to pay $250 for a license is, in the case of one selling by sample and list as agent for a manufacturer and

dealer located in another State, void, as a regulation of interstate commerce.

In *Southern Railway Company* v. *City of Asheville* (69 Fed. Rep., 359) it is held that the act of North Carolina authorizing a city to levy on every railroad company doing business or having an office in the city a license tax not to exceed 1 per cent of the gross receipts of its business is invalid in the case of a railroad whose business extends to points out of the State as a regulation of interstate commerce, and therefore a tax levied under it is invalid, even though it is limited to the business of the railroad company done within the State.

In *Webster* v. *Bell* (68 Fed. Rep., 183) it was held that an ordinance imposing a license tax upon "every express company having an office in the city of A., Va., and receiving goods and forwarding them to points within the State of Virginia, or receiving goods within the State of Virginia and delivering them in the city of A.," is repugnant to the interstate commerce law, and is void.

This identical question has been recently passed upon by the Kansas court of appeals (48 Pac., 924).

In *Gulf, Colorado and Santa Fe Railway Co.* v. *Hefley* (158 U. S., 98) the statute of Texas, making it unlawful for a railroad company in that State to charge and collect a greater sum for transporting freight than is specified in the bill of lading is, when applied to freight transported into the State from a place without it, in conflict with the interstate commerce act, and void as to interstate shipments.

In *Brennan* v. *Titusville* (153 U. S., 289), the city of Titusville, in the State of Pennsylvania, had passed an

ordnance providing "that all persons canvassing or soliciting within said city orders for goods, books, painting, wares, etc., shall be required to procure from the mayor a license to transact said business, and shall pay to the said treasurer therefor the following sums," etc. The defendant at the time of his arrest under said ordinance was an agent of one Shephard, residing in Chicago, and was engaged in soliciting orders for pictures and picture frames in the city of Titusville by going from house to house. The ordinance was held to be void as a regulation of interstate commerce.

In *Minnesota* v. *Barber* (136 U. S., 313), the statute of Minnesota entitled "An act for the protection of the public health by providing for inspection, before slaughtering, of cattle, sheep, and swine designed for slaughter for human food," is unconstitutional and void, so far as it requires, as a condition of sales in Minnesota of fresh beef, veal, mutton, lamb, or pork for human food, that the animals from which said meats are taken shall have been inspected in that State before being slaughtered.

In *In re Rozelle* (57 Fed. Rep., 155)—opinion by Judge Williams—it is held that a municipal ordinance which imposes a license tax on every merchandise broker who maintains a warehouse or office within the city limits is void as to a broker whose sole business is making contract by sample for the sale and delivery to citizens of the State of merchandise which, at the time of making the contract, is the property of citizens of other States, and is situated therein; for as to him it is a regulation of interstate commerce, and contravenes the provision of

the Federal Constitution vesting power to regulate such commerce exclusively in Congress.

One of the most recent and instructive cases upon the subject is found in *Covington Bridge Co.* v. *Kentucky* (154 U. S., 204). There a bridge company was incorporated under an act of the legislature of Kentucky in 1846, with authority to construct a bridge across the Ohio River at Cincinnati. The State of Ohio incorporated the same company, and the bridge was thereupon constructed, connecting the two States. An act of the legislature of the State of Kentucky in 1890 undertook to prescribe the rates of toll which should be charged for crossing the bridge. In a criminal prosecution arising from a violation of this act, the question whether the tolls were properly regulated by the State of Kentucky or whether it was a matter of Federal regulation was before the Supreme Court, and it was held that traffic across the river was interstate commerce, that the bridge was an instrument of such commerce, and that the Kentucky statute was an attempted regulation of such commerce, which the State had no constitutional power to make, and that Congress alone possessed the requisite power to enact a uniform scale of charges in such a case, the authority of the State being limited to fixing tolls on such channels of commerce as are exclusively within its territory.

C. In the light of the foregoing authorities can it be said that the traffic of the commission men at the Kansas City stock yards, composed as it is, to a large extent, of intercourse between themselves and citizens of foreign States and Territories, is not interstate commerce? Are

not the laws of any one State inadequate and inappropriate to control such traffic and intercourse?

The stock pens, loading and unloading chutes, weighing appliances, and other appliances detailed in evidence, together with the offices of the commission men, are located partly on one side of the State line and partly on the other. The evidence discloses that, in the ordinary course of business, commission men on the Missouri side make sales to commission men on the Kansas side, and *vice versa;* that cattle on the Kansas side are sold for delivery on the Missouri side, and *vice versa;* that cattle arriving on one side of the line are unloaded there and penned on the other side; that in the course of making a sale the commission man performs his services partially on one side and partially on the other; that the cattle, in the course of being received, sold, and reshipped, are partially in Kansas and partially in Missouri.

Without going into the minute details of the manner of transacting business at the stock yards, it is apparent that it is impossible to say, in a great majority of cases, what part of the commission man's duty is performed in one State and what part in the other. In the course of making the sale and in the course of weighing the cattle they are sometimes in Kansas and sometimes in Missouri, and it can not be told, without a survey of the hoof prints of each animal, whether it was in Kansas or Missouri, or both, at the time of the completion of its sale.

The very purpose of investing the National Government with authority to control interstate commerce was to prevent conflicting and confusing, as well as hostile,

legislation by the States on the particular subject. It is submitted that where a business transaction so involves two different States that it may not be properly regulated by either one of them, it is then such a subject of interstate commerce as requires uniform national legislation. If the legislature of Kansas undertakes to regulate the business of commission men by prescribing their duties, or regulating or limiting their charges, it is apparent that such legislation is inadequate and inappropriate, because no human being can tell to what transaction it would apply, since it can not be told whether a given transaction occurred and was consummated in the State of Missouri or Kansas. If the States of Kansas and Missouri are free to legislate upon such a subject, then we may have a set of regulations made by the State of Missouri and an entirely different set made by the State of Kansas, conflicting in their nature, which would prove an embarrassment and a hindrance to the conduct of the business. It was to obviate just such embarrassments and restraints upon interstate traffic that the subject was left to the uniform regulation of the Federal Government.

In the case of *Covington Bridge Company* v. *Kentucky* (154 U. S., 204), a bridge across a navigable stream separating two States was held to be an instrument of commerce, and that tolls or charges for using such bridge could not be regulated by any single State, but were subject to regulation by Congress alone. The reason upon which this decision is based is that the traffic concerns two different States, and if each one has the power to or

undertakes to regulate that traffic, an intolerable confusion will result. This is expressed by the court in the following language:

> It is clear that the State of Kentucky, by the statute in question, attempts to reach out and secure for itself a right to prescribe a rate of toll applicable not only to persons crossing from Kentucky to Ohio, but from Ohio to Kentucky, a right which practically nullifies the corresponding right of Ohio to fix tolls from her own State. It is obvious that the bridge could not have been built without the consent of Ohio, since the north end of the bridge and its abutments rest upon Ohio soil, and without authority from that State to exercise the right of eminent domain, no land could have been acquired for that purpose. It follows that, if the State of Kentucky had the right to regulate the travel upon such bridge and fix the tolls, the State of Ohio has the same right, and so long as their action is harmonious there may be no room for friction between the States; but it would scarcely be consonant with good sense to say that separate regulations and separate tariffs may be adopted by each State (if the subject be one for State regulation), and made applicable to that portion of the bridge within its own territory. So far as the matter of construction is concerned, each State may proceed separately by authorizing the company to condemn land within its own territory, but in the operation of the bridge their action must be joint, or great confusion is likely to result. It may be for the interest of Kentucky to add to its own population by encouraging residents of Cincinnati to purchase homes in Covington, and to do this by fixing the tolls at such a rate as to induce citizens of Ohio to reside within her borders. It might be equally

for the interest of Ohio to prescribe a higher rate of toll to induce her citizens to remain and fix their homes within their own State; and as persons living in one State and doing business in another would necessarily have to cross the bridge at least twice a day, the rate of toll might become a serious question to them. Congress, and Congress alone, possesses the requisite power to harmonize such differences, and to enact a uniform scale of charges which will be operative in both directions. The authority of the State, so frequently recognized by this court, to fix tolls for the use of wharves, piers, elevators, and improved channels of navigation has always been limited to such as were exclusively within the territory of a single State, thus affecting interstate commerce but incidentally, and can not be extended to structures connecting two States without involving a liability of controversies of a serious nature. For instance, suppose the agent of the bridge company in Cincinnati should refuse to recognize tickets sold upon the Kentucky side, enabling the person holding the ticket to pass from Ohio to Kentucky, it would be mere *brutum fulmen* to attempt to punish such agent under the laws of Kentucky; or, suppose the State of Ohio should authorize such agent to refuse a passage to persons coming from Kentucky who had not paid the toll required by the Ohio statute or, that Kentucky should enact that all persons crossing from Kentucky to Ohio should be entitled to a free passage, and thus attempt to throw the whole burden upon persons crossing in the opposite direction, it might be an advantage to one State to make the charge for foot passengers very low and the charge for merchandise very high, and for the other side to adopt a converse system. One scale of charges might be advantageous to Kentucky, in this instance, where the larger city is upon

> the north side of the river, while a wholly different system might be to her advantage at Louisville, where the larger city is upon the south side.

The same principle controlled the case of *Hall* v. *De Cuir* (95 U. S., 487). There the State of Louisiana passed a law for the regulation of the business of carriers of passengers within the State. The law had been disregarded by the defendant in the action, who was running a steamboat from New Orleans, La., to Vicksburg, Miss. The plaintiff had taken passage upon the boat in New Orleans to be carried to a landing on the Mississippi River called Hermitage, in Louisiana. The points of embarkation and destination, as well as the river between them, were in Louisiana.

The court said:

> The river Mississippi passes through or along the border of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State would provide for its own passengers and regulate the transportation of its own freight regardless of the interests of others. Nay, more, it would prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other side another. Commerce can not flourish in the midst of such embarrassments. *No*

> *carrier of passengers can conduct his business with satisfaction to himself or comfort to those employing him if on one side of the State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other side be kept separate.* Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammeled by State lines, has been vested with the exclusive legislative power of determining what such regulation shall be.

The same considerations controlled the court in deciding *Gloucester Ferry Co.* v. *Pennsylvania* (114 U. S., 196). The ferry company was incorporated under the laws of New Jersey, and established a steam ferry from the town of Gloucester, in that State, to Philadelphia, across the Delaware River. At each place it had a dock or slip on which freight and passengers were received; the one at Gloucester it owned, the one at Philadelphia it leased. The State of Pennsylvania imposed a tax upon the ferry company, the amount being a certain percentage of the dividends declared. The tax was held to be void, for the reason that the business was interstate commerce.

In passing upon the case, the court says:

> And it needs no argument to show that the commerce with foreign nations and between the States, which consists of the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its nonaction is a declaration that it shall remain free from burdens imposed by State legislation. Otherwise there could be no protection against

> conflicting regulations of different States, each legislating in favor of its own citizens and products and against those of other States. It was from apprehension of such conflicting and discriminating State legislation, and to secure uniformity of regulation, that the power to regulate commerce with foreign nations and among the States was vested in Congress.

Is there any distinction in principle between a bridge over a navigable stream, connecting two States, and the business of these defendant commission merchants, whose daily transactions contemplate services performed in different States and performed upon subjects of commerce which move from one State to the other in the course of the transaction? If the commission man's employment contemplated that in making a sale of cattle from Montana, for example, he should make a trip to Chicago and Omaha, and that the cattle in the course of the transaction should be moved from Kansas to Nebraska and Illinois, is there any question that the transaction would be one involving interstate commerce?

It makes no difference in principle that the Kansas part of the stock yards and the Missouri part of the stock yards are separated merely by the State line. Distance is immaterial.

As the court says in the *Covington Bridge Company Case, supra:*

> If * * * interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is bound, before or after crossing such State line. * * *

> Commerce was defined in *Gibbons* v. *Ogden* (9 Wheat. 1, 189) to be "intercourse," and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool.

May it not be equally well said that the commission men, who, in the course of their usual and customary occupations, pass and repass from the Missouri part of the stock yards to the Kansas side, and *vice versa*, are "as truly engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool?"

It is not believed that any set of regulations devised by either Missouri or Kansas alone would be adequate or appropriate for the regulation of such business, and it therefore belongs to the domain of interstate commerce.

The interstate character of the business transacted by the defendant commission men at the Kansas City stock yards is further emphasized by the Federal legislation upon the subject.

Sections 4386, 4390 of the Revised Statutes of the United States provide that any railroad company whose road forms any part of a line of road over which animals are conveyed from one State to another is prohibited from confining the same in cars over twenty-eight consecutive hours without unloading them for rest, water, and food, for at least five consecutive hours.

By the act of May 29, 1884, a Bureau of Animal Industry was established, "to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals."

Section 6 of said act is as follows:

SEC. 6. That no railroad company within the United States, or the owners or masters of any steam or sailing vessel or other vessel or boat, shall receive for transportation or transport from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia.

Nor shall any person, company, or corporation drive on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock knowing them to be affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia.

Provided, That the so-called splenetic or Texas fever shall not be considered a contagious, infectious, or communicable disease within the meaning of sections four, five, six, and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.

Then follows the act of March 3, 1891, entitled "An act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, and for other purposes."

Section 2 of said act is as follows:

SEC. 2. That the Secretary of Agriculture shall also cause to be made a careful inspection of *all live cattle the meat of which is intended for exportation to any foreign country*, at such times and places, and in

such manner, as he may think proper, with a view to ascertain whether said cattle are free from disease and their meat sound and wholesome.

And may appoint inspectors, who shall be authorized to give an official certificate clearly stating the condition in which such cattle and meat are found.

And no clearance shall be given to any vessel having on board any fresh beef for exportation to and sale in a foreign country from any port of the United States until the owner or shipper shall obtain from an inspector appointed under the provisions of this act such certificate.

Section 3 is as follows:

SEC. 3. The Secretary of Agriculture shall cause to be inspected, *prior to their slaughter*, all cattle, sheep, and hogs which are subjects of interstate commerce, and which are about to be slaughtered at slaughterhouses, canning, salting, packing, or rendering establishments in any State or Territory, the *carcasses or products of which are to be transported and sold for human consumption in any other State or Territory, or the District of Columbia.*

And in addition to the aforesaid inspection, there may be made in all cases where the Secretary of Agriculture may deem necessary or expedient, under rules and regulations to be by him prescribed, a post-mortem examination of the carcasses of all cattle, sheep, and hogs about to be prepared for human consumption at any slaughterhouse, canning, salting, packing, or rendering establishment in any State or Territory, or the District of Columbia, which are the subjects of interstate commerce.

Section 4 is as follows:

SEC. 4. That said examination shall be made in the manner provided by rules and regulations to be

prescribed by the Secretary of Agriculture, and after said examination, the carcasses and products of all cattle, sheep, and swine found to be free of disease, and wholesome, sound, and fit for human food, shall be marked, stamped, or labeled for identification, as may be provided by said rules and regulations of the Secretary of Agriculture.

Section 7 is as follows:

SEC. 7. That none of the provisions of this act shall be so construed as to apply to any cattle, sheep, or swine slaughtered by any farmer upon his farm, which may be transported from one State or Territory, or the District of Columbia, into another State or Territory, or the District of Columbia.

Provided, however, That if the carcasses of such cattle, sheep, or swine go to any packing or canning establishment and are intended for transportation to any other State or Territory or the District of Columbia, as hereinbefore provided, they shall there be subject to the post-mortem examination provided for in sections three and four of this act.

By the act of March 2, 1895, entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1896," section 2 of the act of 1891 is amended to read as follows:

That the Secretary of Agriculture shall also cause to be made a careful inspection of *all live cattle* the meat of which, fresh, salted, canned, corned, packed, cured, or otherwise prepared, *is intended for exportation to any foreign country*, at such times and places and in such manner as he may think proper, with a view to ascertain whether said cattle are free from disease and their meat sound and wholesome, and may appoint inspectors, who shall be authorized to

give an official certificate clearly stating the condition in which such cattle and meat are found, and no clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef, being the meat of cattle killed after the passage of this act, for exportation to or sale in a foreign country from any port in the United States until the owner or shipper shall obtain from an inspector appointed under the provisions of this act a certificate that said cattle were free from disease and that their meat is sound and wholesome.

Section 4 of the act of 1891 is amended to read as follows:

SEC. 4. That said examination shall be made in the manner provided by the rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep, and swine found to be free of disease and wholesome, sound, and fit for human food shall be marked, stamped, or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture.

The act also contains the following provision:

The Secretary of Agriculture is hereby authorized to make *such rules and regulations as he may decide to be necessary to prevent the transportation from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia or to any foreign country* of the condemned carcasses or parts of carcasses of cattle, sheep, and swine which have been inspected in accordance with the provisions of this act. Any person, company, or corporation owning or operating any such slaughterhouse, abattoir, or meat curing, packing, or canning establishment, or any employee of the same, that

> shall willfully violate any provision of this act shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished for each offense by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

It is thus seen that Congress has not left the States free to act upon the subject of interstate shipments of cattle. The Federal power and protection is thrown around the shipment of cattle originating in a foreign State, not only during the transit and not only while the cattle are in the stock yards waiting to be sold for slaughter and shipment to a foreign market or to a foreign State, but even while the cattle are in the hands of the packing houses, waiting slaughter for the purpose of shipment beyond the boundary of the State.

The evidence shows, without contradiction, that in pursuance of the acts of Congress above quoted the Federal Government has established inspectors at the Kansas City stock yards and at the packing houses and has assumed to its jurisdiction the cattle while in the hands of the commission men for sale and shipment. Congress has the power to do this only by virtue of the cattle *then* being subjects of interstate commerce. If the cattle are subjects of interstate commerce, then the contract and agreement embodied in the rules and by-laws of the defendant exchange operate upon and apply to interstate commerce. Whether such rules and by-laws, applying as they do to subjects of interstate commerce, constitute a contract or conspiracy in restraint of trade will next be considered.

VI.

THE ANTITRUST ACT OF JULY 2, 1890, BEING A SPECIAL ACT UNDER AUTHORITY OF THE CONSTITUTION TO PREVENT RESTRICTIONS OR BURDENS UPON INTERSTATE COMMERCE IS COEXTENSIVE IN ITS OPERATION WITH THE LIMIT OF FEDERAL POWER.

The domain of the control over commerce includes three classes of cases: First, where the control of Congress is *exclusive;* second, where the control of the States is *exclusive;* and, third, where the control of Congress and of the States may be termed *concurrent*, which embraces matters that are not national in their character and so do not require national legislation, but in which the States may act *in the absence of legislation by Congress.* (*Bridge Co.* v. *Kentucky*, 154 U. S., 204.)

Instances of the *concurrent jurisdiction* include matters which affect commerce *incidentally* and do not amount to a *regulation* of it. They are such as are local in their nature and which would require specific regulation for *each particular locality.*

In this class are included the regulation of pilots.

Cooling v. *Board of Wardens*, 12 How., 299.
Steamship Co. v. *Joliffe*, 2 Wall., 450.
Ex parte McNiel, 13 Wall., 236.
Wilson v. *McNamee*, 102 U. S., 572.

Also quarantine and inspection laws, and the policing of harbors.

Gibbons v. *Ogden*, 9 Wheat., 1, 203.
City of New York v. *Miln*, 11 Peters, 102.
Turner v. *Maryland*, 107 U. S., 38.
American Steamship Co. v. *Louisiana*, 118 U. S., 455.

Also the regulation and improvement of navigable channels.

County of Mobile v. *Kimball*, 102 U. S., 691.
Escanata Co. v. *Long*, 107 U. S., 679.
Huse v. *Glover*, 119 U. S., 543.

The regulation of wharves, piers, and docks.

Cannon v. *New Orleans*, 20 Wall., 577.
Packet Co. v. *Keokuk*, 95 U. S., 80.
Packet Co. v. *St. Louis*, 100 U. S., 423.
Packet Co. v. *Catlettsburg*, 105 U. S., 559.
Transportation Co. v. *Parkersburg*, 107 U. S., 691.
Ouchita Packet Co. v. *Aiken*, 121 U. S., 444.

The construction of dams and bridges across navigable waters of a State.

Wilson v. *Blackbird Creek Marsh Co.*, 2 Peters, 245.
Hardwell v. *American Bridge Co.*, 113 U. S., 205.
Pound v. *Turck*, 95 U. S., 459.

The establishment of ferries.

Conway v. *Taylor's Ex.*, 1 Black, 603.

Even in these matters of concurrent jurisdiction, in which the State is permitted to make regulations, the Federal authority when exercised is supreme. The action of the State is permissive only, and it is unquestionably within the power of Congress to make regulations of its own which would supersede any and all of such State regulations. In other words, in this class of cases, which are sometimes called aids or incidents to commerce, *the Federal power is supreme if Congress chooses to exercise it.*

Thus, in the case of *Minnesota* v. *Illinois* (94 U. S., 214), the power was conceded to the State to prescribe

regulations and fix charges on elevators used for the reception, storage, and delivery of grain, notwithstanding such elevators were used for the storage of grain destined for other States. While the power of the State was upheld, yet it was conceded that Congress might impose regulations of its own should it so desire. The court said:

> Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and certainly, *until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may operate upon commerce outside of its immediate jurisdiction.*

The principle in this case has been affirmed in *Budd* v. *New York* (143 U. S., 517), and reaffirmed in *Brass* v. *North Dakota* (153 U. S., 391).

It is said in *Ouchita Packet Co.* v. *Aiken* (121 U. S., 444, 447):

> Wharfage, the matter now under consideration, is governed by the local State laws; *no act of Congress has been passed to regulate it.*

In the very recent case of *Chicago Railway Company* v. *Solan* (18 Sup. Ct. Rep., 289) the court upheld an act of the legislature of the State of Iowa, in respect to an interstate shipment, which provided that "no contract, receipt, rule, or regulation shall exempt any corporation engaged in transporting persons or property by railway from the liability of a common carrier or carrier of passengers which would not exist had no contract,

receipt, rule, or regulation been made or entered into." The court said:

> *So long as Congress has not legislated upon the particular subject* they are rather to be regarded as legislation in aid of such commerce and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits.

In *Cotting* v. *Stock Yards Company* (82 Fed. Rep., 850) Judge Thayer said, in speaking of the validity of the act of the legislature of Kansas in fixing charges for yardage, etc., of the stock yards company: "The court is of the opinion that this power to fix a limit to such charges is not of such an exclusive character as to prevent the State of Kansas from exercising a similar power *in the absence of any legislation on the subject by Congress.*"

By the act of July 2, 1890, Congress, under its constitutional authority, *has assumed jurisdiction of all matters relating directly or indirectly to interstate commerce over which the Federal authority extends.* Having drawn to itself jurisdiction over matters of contracts or conspiracies in restraint of trade as well as monopolies, its jurisdiction extends not only to the class of cases in which the authority of Congress is exclusive, *but also to that class of cases where there exists ordinarily a concurrent jurisdiction.*

The extent of the Federal power in giving protection to an article imported from a sister State or from a foreign country is illustrated in a variety of cases.

In *Welton* v. *Missouri* (91 U. S., 275) it is held:

> The power continues until the commodity has ceased to be the subject of discriminating legislation

> by reason of its foreign character. That power protects it, *even after it has entered the State*, from any burdens imposed by reason of its foreign origin.

This protection was held to extend to meats from animals slaughtered in Illinois and shipped to Virginia, so as to give to the importer the right "to compete in the markets of Virginia upon terms of equality with the owners of like meats from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale."

> *Brimmer* v. *Rebman*, 138 U. S., 78.
> *Minnesota* v. *Barber*, 136 U. S., 313.
> *Walling* v. *Michigan*, 116 U. S., 446.

Citations might be multiplied, but it is not necessary. Instances of the exercise of the Federal power are frequently confined to cases where it was interposed to prevent hostile or discriminating legislation on the part of the State. But the occasion for its exercise is immaterial. The important fact is that the Federal power *exists for the protection of the foreign product long after it has crossed the boundary line of the State.*

In the enactment of the act of July 2, 1890, Congress must be presumed to have made its operation *coextensive with the Federal power of protection.* In other words, as far as the courts may go in protecting an imported article *from hostile legislation, so far Congress may go, and doubtless has gone by this act, to prevent combinations or conspiracies or monopolies in restraint of trade.*

Cases which are frequently cited as evidence of the power of the States over an imported article as soon as it arrives within its limits, are, when carefully considered,

illustrations of the power of the General Government over the article *even after the State may tax the article or legislate in respect thereto in the absence of legislation by Congress.*

Of this class may be mentioned the following:

Brown v. *Houston*, 114 U. S., 622.
Pittsburg Coal Company v. *Bates*, 156 U. S., 577.
Machine Company v. *Gage*, 100 U. S., 676.
Emert v. *Missouri*, 156 U. S., 296.

In the case of *Brown* v. *Houston*, a cargo of coal had arrived at New Orleans and was being peddled out in comparatively small quantities. It was held that the State might levy a tax upon it. It is apparent, however, that the Federal power and protection over it *had not ceased* and that Congress, *had it assumed jurisdiction over the particular article*, could have excluded such authority. The court says (p. 633):

> The taxing of goods coming from other States, as such, by reason of their so coming, *would be a discrimination tax against them as imports, and would be a regulation of interstate commerce* inconsistent with that perfect freedom of trade which Congress has seen fit should remain undisturbed.

If the Federal power may intervene to prevent a discriminating tax, must it not be said that it does so solely by reason of the article *then* being a subject of interstate commerce?

Even in *Machine Company* v. *Gage*, *supra*, it is manifest that the article was still under Federal protection, for the court says:

> In all cases of this class to which the one before us belongs it is a test question whether there is any

discrimination in favor of the State or of the citizens of the State which enacted the law. *Where there is such discrimination it is fatal.*

The same considerations controlled the court in *Emert* v. *Missouri* (156 U. S., 290). There a person engaged in peddling sewing machines imported from another State was required to pay a peddler's license. This court upheld the license on the ground that it was but the exercise of the police power of the State, and not a regulation of commerce among the States. But the conclusion is irresistible that the sewing machines in the hands of the agent were *subjects of interstate commerce*, for the reason that the court says that even as to that commodity, *under those circumstances*, a *discriminating* tax or license would be invalid.

The antitrust act, being a regulation *by Congress*, under the power given it by the Constitution, *extends to all subjects of interstate commerce so long as the article continues to be within the Federal protection*. Its restrictions are coextensive with Federal protection. Wherever it is in the power of the Federal Government, by virtue of its right to regulate commerce to protect the article against hostile legislation and discrimination, so far the article, or the commerce of which it is a part, must be free from such restraints as are prohibited by the acts of July 2, 1890.

As applied to the case at bar it is apparent any hostile or discriminating legislation on the part of the States of Kansas or Missouri affecting cattle at the Kansas City stock yards which have arrived from other States for immediate sale would be an unlawful attempt to regulate

interstate commerce, and this for the reason that the cattle were *then* under the protection of the Federal power, by reason of being *then* subjects of interstate commerce.

If the Federal power extends to them for *any purpose* does it not follow that they are embraced within the terms of the act of July 2, 1890, in which Congress assumes jurisdiction over the entire subject of interstate commerce in the matter of contracts, etc., in restraint of trade?

VII.

SOME SUGGESTIONS IN ANSWER TO THE APPELLANTS' CONTENTION THAT THE DEFENDANTS ARE NOT ENGAGED IN INTERSTATE COMMERCE.

A. From the very nature of things it must be apparent that the act of July 2, 1890, applies to contracts, combinations in the form of trust or otherwise, or conspiracies, in restraint of trade or commerce, and to the monopoly of any part of the trade or commerce among the several States, *regardless of the question whether the persons who conspire or who monopolize are engaged in interstate commerce or not.* The purpose of the act is to preserve the healthy flow of commerce in its usual and natural channels, and the prohibition of the act is aimed at any combination which *operates directly upon such commerce and restrains it or monopolizes it.*

As said by Mr. Justice Brewer in *In re Debs* (158 U. S., 581):

> If a State, with its recognized powers and sovereignty, is impotent to obstruct interstate commerce,

> can it be that any mere voluntary association of individuals within the limits of that State has the power which the State itself does not possess?

Again, in the same case, the supposition made, "If all the inhabitants of a State, or even a great body of them, should combine to obstruct interstate commerce, etc.," gives color to our contention that it is the *obstruction* and the *restraint* that is aimed at by the act, and that the *occupation of the persons who impose such restraint is immaterial.* If the inhabitants of a State or even a great body of them should combine and conspire to obstruct interstate commerce, would any one contend that this was not a violation of the act? Would any one claim that the inquiry as to the occupation of the various persons would be pertinent or that it must first be established that they themselves were engaged in interstate commerce, before a court would listen to the complaint of the Government in an action to prevent and remove such obstruction?

In the construction placed upon the act by the various circuit courts and courts of appeal, combinations of individuals, *regardless of their occupation*, have been held to constitute a violation.

> Charge to Grand Jury, 62 Fed. Rep., 828.
> Charge to Grand Jury, 62 Fed. Rep., 840.
> *United States* v. *Ogle*, 62 Fed. Rep., 824.
> *Waterhouse* v. *Comer*, 55 Fed. Rep., 150.
> *United States* v. *Elliott*, 62 Fed. Rep., 801.
> *Thomas* v. *Rld. Co.*, 62 Fed. Rep., 803.
> *United States* v. *Cassaday*, 67 Fed. Rep., 698.
> *United States* v. *Elliott*, 64 Fed. Rep., 27.
> *United States* v. *Workingmen's Amalgamated Council*, 54 Fed. Rep., 994; 57 Fed. Rep., 85.
> *United States* v. *Debs*, 64 Fed. Rep., 724.

Of the latter case it is said by this court (158 U. S., 600):

> It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act.

B. We believe, however, that it will appear to this court, as found by the court below, that the defendants are engaged in interstate commerce, although we submit that is not a controlling question. As said by the lower court:

> But the business of the defendants is *more than personal services; it is not merely local instrumentality in aid of commerce. Defendants are active promoters and frequently interested parties in this immense traffic. They reach out over many States and Territories by their solicitors and advertisements, and gather in for sale and sell millions of cattle, sheep, and hogs, and their rules and regulations cover the entire business and extend over the whole field of operation.*

In speaking of these very stock yards, Judge Thayer says (82 Fed. Rep., 852):

> *Much business is transacted at the Kansas City stock yards, consisting in the purchase and sale of live stock shipped to that market from other States than Kansas, which is interstate business.*

The defendant commission men, in selling live stock as the agent of the importer, which is sent from other States to the stock yards for immediate sale or reshipment to some foreign State, in reaching out over the Western country with their solicitors, seeking shipments, negotiating loans, making contracts, sending telegrams, etc., are unquestionably engaged in interstate commerce

within the meaning of the definitions heretofore given, where the subject is more particularly discussed.

But whether engaged in interstate commerce or not, the decisive fact is that they *stand at the gateway through which flows the great stream of commerce of several States and Territories and exact toll and tribute.* The territory tributary to the Kansas City market is vast. The great number of cattle raisers, who annually send millions of animals to the Kansas City market, have the constitutional right to have their traffic, which is unquestionably interstate, carried on free from restrictions, regulations, or control. *They have a right to demand free and open competition.* If, as appears from the affidavits and as was found by the lower court, the *rate of commissions* for the sale of live stock have been *doubled by the formation of this exchange*, the stock growers and stock raisers have a right to *insist* that the exchange operates upon the commerce in which they are engaged, *and tends to restrict and restrain that which, prior to the formation of the exchange, was free and unobstructed and regulated by a healthy law of competition.*

C. A number of cases are cited by the appellants upon the proposition that a charge for "services rendered or for conveniences provided" is not a regulation of interstate commerce, but may be made by the States without invading the Federal power. The citation of these cases upon this proposition is misleading. The reasonable inference from a reading of the appellant's brief on this subject would be that in all cases and under all circumstances a reasonable charge may be made by State authority, affecting interstate commerce directly or indi-

rectly, without constituting a regulation of interstate commerce.

The cases cited do not so hold. They are all of them illustrations of the rule that, as to certain matters which are not national in their character but belong to that domain where the State and Federal power have concurrent jurisdiction, the State, in the absence of legislation by Congress, may enact laws, make regulations, and fix charges. They are cases where wharfage charges and the like have been upheld, not upon the ground that charges may be made for services rendered or facilities provided in matters of interstate commerce, but upon the ground that the State in the particular instance has the power to legislate in the absence of legislation by Congress. The cases cited by appellants in their brief, pages 56 and 57, are but illustrations of this rule. The following were wharfage cases:

Packet Co. v. *Keokuk*, 95 U. S., 80.
Packet Co. v. *St. Louis*, 100 U. S., 423.
Vicksburg v. *Tobin*, 100 U. S., 430.
Packet Co. v. *Catlettsburg*, 105 U. S., 559.
Transportation Co. v. *Parkersburg*, 107 U. S., 691.
Ouachita Packet Co. v. *Aiken*, 121 U. S., 444.

Again, the State has the power to improve a navigable river and make a reasonable charge upon the shipping in the absence of legislation by Congress. Such was the case of *Huse* v. *Glover* (119 U. S., 543), cited by appellants.

The rule is well stated in *Ouachita Packet Co.* v. *Aiken* (121 U. S., 444, 447), where the court said:

> The case is clearly within the principles of the former decisions of this court, which affirmed the

right of a State, in the absence of regulation by Congress, to establish, manage, or carry on works and improvements of a local character, though necessarily more or less affecting interstate and foreign commerce. We may particularly refer to the recent cases of *Transportation Co.* v. *Parkersburg* (107 U. S., 691), *Morgan Steamship Co.* v. *Louisiana* (118 U. S., 455), and *Huse* v. *Glover* (119 U. S., 543), in which most of the former decisions involving the same principle are cited and referred to. The first of these was a case of wharfage; the second, one of quarantine, and the third that of a lock in Illinois River constructed by the State of Illinois in aid of navigation. The same principle was applied and enforced in the cases of *Cooley* v. *Board of Wardens of Philadelphia* (12 How., 299), on the subject of pilotage; in *Mobile* v. *Kimball* (102 U. S., 691), where a State law provided for the improvement of the river and harbor of Mobile; in the various cases of bridges over navigable rivers which have come before this court, and which are reviewed and approved in *Escanaba Co.* v. *Chicago* (107 U. S., 678), and in *Turner* v. *Maryland* (107 U. S., 38), which related to the inspection of tobacco. The same principle was reaffirmed, with the limitations to which its application is subject, in the recent case of *Robbins* v. *Shelby Taxing District* (120 U. S., 489, 493). In all such cases of local concern, though incidentally affecting commerce, we have held that the courts of the United States can not, as such, interfere with the regulations made by the State, nor sit in judgment on the charges imposed for the use of improvements or facilities afforded or for the services rendered under State authority. * * *

Wharfage—the matter now under consideration—is governed by the local State laws. No act of Congress has been passed to regulate it.

The whole matter is ably summed up in the case of the *Covington Bridge Co.* v. *Kentucky* (154 U. S., 204), as follows:

> The power of Congress over commerce between the States and the corresponding power of individual States over such commerce have been the subject of such frequent adjudication in this court, and the relative powers of Congress and the States with respect thereto are so well defined, that each case, as it arises, must be determined upon principles already settled, as falling on one side or the other of the line of demarcation between the powers belonging exclusively to Congress and those in which the action of the State may be concurrent. The adjudications of this court with respect to the power of the States over the general subject of commerce are divisible into three classes: First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the States can not interfere at all. * * *

It is very obvious that the class of cases cited by counsel under this heading, being those of what may be termed concurrent jurisdiction, shed very little light upon the case at bar. The regulation of pilots, quarantine, inspection laws, and the policing of harbors, the improvement of navigable channels, the regulation of wharves, piers, and docks, etc., are matters of local concern. They are not national in character; they affect commerce but incidentally. The jurisdiction of the State and of the National Government is concurrent, in the sense that the State may act if Congress does not.

The States may make reasonable charges for facilities afforded in this manner.

But the moment that Congress acts, the jurisdiction of the States is at once ousted. If Congress should see fit to pass a law regulating ferries, wharves, pilots, etc., in various localities, it will scarcely be contended that, after such legislation, the State would have any power or authority over the matter.

In the case at bar jurisdiction has been asserted by the General Government. So far as interstate commerce is concerned, Congress has enacted that it must be free, unrestricted, untrammeled, and unobstructed. Having assumed jurisdiction to itself, no other power or authority can affect it or interfere with it.

D. It is further contended by the appellants that they are not engaged in commerce; that, at most, they are *mere aids to commerce*; that the effect of their business on interstate commerce is indirect and incidental and does not amount to a regulation.

Nathan v. *Louisiana* (8 Howard, 73), cited by appellants, involved the legality of a tax on exchange and money brokers. The brokers' business was limited to foreign bills of exchange. The tax was upheld upon the ground that the business of the brokers, which was that of drawing foreign bills of exchange and charging a premium therefor, was *not commerce*, and therefore the brokers were not engaged in commerce at all.

The court says:

> A bill of exchange is *neither an export nor an import*. It is not transmitted through the ordinary channels of commerce, but through the mail. It

is a note merely ordering the payment of money, which may be negotiated by endorsement, and the liabilities of the names that are on it depend on certain acts to be done by the holder when it becomes payable.

The dealer in bills of exchange requires capital and credit. He generally draws the instrument, or it is drawn at his instance, when he is desirous of purchasing it. The bill is worth more or less as the rate of exchange shall be between the place where it is drawn and where it is payable. The rate is principally regulated by the expense of transmitting the specie from the one place to the other, fixed somewhat by the demand and supply of specie. Now, the individual who uses his money and credit in buying and selling bills of exchange, and who thereby realizes a profit, may be taxed by a State in proportion to his income, as other persons are taxed, or in the form of a license. He is not engaged in commerce, but in supplying an instrument of commerce. He is less connected with it than the shipbuilder, without whose labor foreign commerce could not be carried on.

Similar in principle is the case of *Paul* v. *Virginia* (8 Wall., 168), cited by appellants, in which a State statute was upheld providing that an *insurance* corporation of a foreign State must first obtain a license before doing business in Virginia. The business of insurance, like the business of drawing and negotiating foreign bills of exchange, is held by the court *not* to constitute commerce. The court says:

The defect of the argument lies in the character of their business. Issuing a policy of insurance is not a transaction of commerce. The policies are

> simply contracts of indemnity against loss by fire, entered into between the corporations and the insured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having existence and value independent of the parties to them. *They are not commodities, to be shipped or forwarded from one State to another and then put up for sale.* They are like other personal contracts between parties, which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States.

The distinction is again made prominent in the *Trade-Mark Cases* (100 U. S., 82, 95), where, referring to *Paul* v. *Virginia*, the court says:

> This court held that a policy of insurance made by a corporation of one State on property situated in another was not an article of commerce, and did not come within the purview of the clause we are considering. "They are not," says the court, "commodities to be shipped or forwarded from one State to another and then put up for sale."

The relevancy of these cases, cited and apparently relied upon by appellants, is not apparent. They hold that persons who are engaged in a business which is not commerce are not engaged in interstate commerce. They can have no application to a case like the one at bar, which involves "commodities to be shipped or forwarded from one State to another and then put up for sale."

VIII.

THE BY-LAWS OF THE DEFENDANTS CONSTITUTE A CONTRACT OR CONSPIRACY IN RESTRAINT OF TRADE OR COMMERCE.

Having shown that the rules and by-laws of the defendants operate upon commerce among the several States, it remains to be seen whether such rules and by-laws constitute a "contract or combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce."

It is not simply a question whether the combination of the defendants is void *at common law* as *an unreasonable restraint of trade or commerce*, but it is a question whether *under the terms of the antitrust act* the agreement constitutes a restraint of trade, reasonable or unreasonable.

A. The rules of the defendants, establishing a minimum commission charge, operate upon an article of *prime necessity*. The charge enters into and becomes a part of the price for which this food product is sold. The commission charged under the rules of exchange is 50 cents per head for cattle, and the overwhelming evidence shows that while there was a *nominal price* of 50 cents charged by commission men prior to organization of the exchange, yet in fact and in practice, as found by the lower court, a commission of only *25 cents*, or only 50 per cent of the present charge, was the amount then generally exacted. This was regulated by a system of rebates, the nominal price being charged and afterwards rebated; from which we may infer that there was an agreement among the members, in reference to commission, which was more

usually honored in the breach than in the observance. The organization of the present exchange is unquestionably due to a desire on the part of the commission men to establish a more rigid rule, and to prevent its violation by heavy penalties, and to prevent any one from doing a commission business except in compliance with such rules.

The organization of the exchange, therefore, *has had the effect to advance the price of food products;* and the present existence of the exchange, with its minimum commission charges, operates to *maintain such increased prices.*

Even at the common law any contract or combination which had the effect of *stifling competition* and fixing *arbitrary prices* on articles of *prime necessity*, not based upon the law of supply and demand, was illegal. This was conceded to be the law in the Trans-Missouri Case in the court of appeals, where (58 Fed., 58) Judge Sanborn says:

> Turning first then to the decisions, we find that it has long been settled *that contracts or combinations of the producers or dealers in staple commodities of prime necessity to the people to restrict or monopolize their supply or enhance their price*, pooling contracts, or combinations between such producers or dealers to divide their profits in certain fixed proportions, and pooling contracts or combinations between competing common carriers, *are illegal restraints of trade and void.*

Or, as stated by the Supreme Court in *De Witt Clothing Co.*, v. *New Jersey Clothing Co.* (14 N. Y. Supp., 277):

> The people have a right to the *necessaries* and *conveniences* of life, *at a price determined by the edu-*

tion of supply and demand, and the law forbids any agreement or combination whereby that price is removed beyond the salutary influence of legitimate competition.

The following is a partial list of the articles that have been held by the courts in the cases cited below to be of such *general importance* and *necessity* that an attempt to control their price or production is illegal, regardless of the reasonableness of the restrain imposed:

Coal, gas, matches, lumber, cotton bagging, butter, grain, salt, alcohol, candles, milk, preserves, cloth, grain bags, harrows.

Morris Run Coal Co. v. *Barclay*, 68 Pa. St., 173.
Arnot v. *Coal Co.*, 68 N. Y., 568.
Gibbs v. *Consolidated Gas Co.*, 130 U. S., 408.
People v. *Gas Co.*, 130 Ill., 268.
Chicago Gas Light Co. v. *People's Gas Light Co.*, 121 Ill., 530.
Richardson v. *Buhl*, 77 Mich., 632.
Santa Clara Valley Mining Co. v. *Hayes*, 76 Cal., 387.
India Bagging Association v. *Kock*, 14 La. Ann., 167.
Chappin v. *Brown*, 83 Ia., 156.
Craft v. *McConoughy*, 79 Ill., 346.
Central Ohio Salt Co. v. *Guthrie*, 35 Ohio St., 666.
Clancy v. *Salt Co.*, 62 Barb., 395.
State v. *Neb. Distilling Co.*, 29 Neb., 700.
Emery v. *Ohio Candle Co.*, 47 O. St., 320.
Chicago Milk Shippers' Association v. *Ford*, 4th Nat. Corp. Rep., 300.
American Preservers' Trust v. *Taylor Mfg. Co.*, 46 Fed., 152.
Hilton v. *Eckersley*, 6th El. & Bl., 47.
Pacific Factory Co. v. *Adler*, 90 Cal., 110.

Strait v. *National Harrow Co.*, 18 N. Y. Supp., 224.

It needs neither argument nor citation of authority to prove that cattle and meat products are necessary articles of *prime importance*, and that any combination tending to restrict or limit competition therein would, *even under the rules of the common law*, be illegal and void as an unreasonable restraint of trade.

The rules and by-laws of the defendants prevent competition. They prevent the owner of cattle from contracting in open market for the services of commission men to make a sale of his cattle, as he was able to do prior to formation of the exchange, but compel him to be satisfied with and pay an artificial price.

"*Competition*," says the court in the Trans-Missouri Case, "*free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life.* Evils, as well as benefits, result therefrom. In the fierce heat of competition the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; *yet, balancing the benefits against the evils, the law of competition remains as a controlling element in the business world.*"

This rule is almost as old as the law itself. In *Mitchell* v. *Reynolds* (1 P. Williams, 181) Chief Justice Parker said that "to obtain the sole exercise of any trade throughout England was a monopoly and a crime."

In *Hooker* v. *Vandewater* (4 Den., 349) the court said:

> It is a familiar maxim that *competition is the life of trade.* It follows that whatever destroys or *even*

relaxes competition in trade is injurious if not fatal to it.

"Public policy," says Judge McIlvaine, in *Salt Co.* v. *Guthrie* (35 O. St., 666), "unquestionably favors *competition in trade* to the end that its *commodities may be afforded to the consumer as cheaply as possible*, and is opposed to monopolies which tend to advance market prices to the injury of the general public."

A case very much in point is *More* v. *Bennett* (140 Ill., 69), where it is said:

> A combination or conspiracy among a number of persons engaged in a particular business *to stifle or prevent competition, and thereby to enhance or diminish prices to a point above or below what they would be if left to the influence of unrestricted competition, is contrary to public policy, and the courts will refuse their aid to the enforcement of contracts by which such combinations are sought to be effected.*

This rule was applied to an association of *stenographers*, whose articles of association *regulated the price of reporting legal proceedings in shorthand.* The rates established by said association were as follows:

> Not less than 20 cents per folio for single copy; not less than 25 cents per folio for two copies; not less than 28 cents per folio for three copies; and the rate of $10 per day for attendance.

After citing authorities holding that such combination is unlawful and in restraint of trade, the court says (p. 79):

> Counsel seek to distinguish this case from those cited by the circumstances alleged in the second

count of the declaration, that but a *small portion of the law stenographers of Chicago belong to said association*. An analogy is thereby sought to be raised between the contract in this case and those contracts in partial restraint of the trade which the law upholds. We think the analogy thus sought to be raised does not exist. Contracts in partial restraint of trade which the law sustains are those which are entered into *by a vendor of a business and its good will*, with his vendee, by which the vender agrees not to engage in the same business within a limited territory; and the restraint, to be valid, must be no more extensive than is reasonably necessary for the protection of the vendee in the enjoyment of the business purchased. But in the present case there is *no purchase or sale* of any business, nor any other analogous circumstance giving to one party a just right to be protected against competition from the other. All of the members of the association are engaged in the *same business within the same territory*, and the object of the association is purely and simply *to silence and stifle all competition as between its members*. No equitable reason for such restraint exists, the only reason put forward being that under the influence of *competition* as it existed prior to the organization of the association, prices for stenographic work had been reduced too far, and the association was organized *for the purpose of putting an end to all competition, at least as between those who could be induced to become members*. True, the restraint is not so far-reaching as it would have been if *all* the stenographers in the city had joined the association, but so far as it goes it is precisely of the same character, produces the same results, and is subject to the same legal objection.

It may also be observed, by the constitution of the association, any reputable stenographer regularly

engaged in law reporting in Cook County is eligible to membership, *and if all or a major part of the stenographers in said county engaged in that business are not already members, it is because the association has not yet fully accomplished the purpose of its organization.* We can see no legal difference between the *restraint upon competition which it now exercises* and between that which it *will exercise* when it is in a position to dictate terms to *all who are engaged in the business* and to all who may wish to obtain the services of law stenographic reporters.

It is to be noted that the case of *More* v. *Bennett* is directly in point and is closely analogous to the case at bar. If a schedule of prices for stenographic reporting is unlawful, when made by an association of stenographers, it is difficult to see how a fixed schedule of commissions entered into by an association of commission men can be held to be lawful. The case of *More* v. *Bennett* has been cited and followed in a number of cases, among which are the following:

Nestor v. *Brewers' Association*, 29 Atl., 102.
People v. *Chicago Live Stock Exchange*, 48 N. E. Rep., 1062.
Jackson v. *Stanfield*, 137 Ind., 592.
American Fire Ins. Co. v *State*, 22 So. Rep., 99.
Milwaukee Masons and Builders' Association v. *Niezorowski*, 70 N. W. Rep., 166.

In *Texas Standard Oil Co.* v. *Adoue* (83 Tex., 650) a contract was made by the owners of five cotton-seed oil mills, whereby prices of seed cotton were fixed and the markets where each was to buy named, and the prices to

be charged only stipulated. This was held to be an unlawful combination on the ground that the tendency was to create a *monopoly* and *stifle competition*. The court said:

> But to render a contract void it is not necessary that it should create a pure monopoly. It would seem that the agreement may be illegal if the *natural or necessary consequences* of its operation are to *prevent competition and create fictitious prices* independent of the law of supply and demand, and to such an extent as to injuriously affect the interests of the State or the interests of any particular class of citizens who may be especially interested, either as producers or consumers, in the articles or staples which are the subject of the restrictions imposed by the contract.

In *Morris Run Coal Co.* v. *Coal Co.* (68 Pa. St., 673) (a case much quoted) five coal companies of Pennsylvania entered into an agreement to divide two coal regions of which they had control; to appoint a committee to take charge of their interests, which was to decide all questions, and appoint a general agent at Watkins, N. Y.; the coal mined to be delivered through him; each corporation to deliver its proportion at its own cost in the different markets, at such time and to such persons as the committee might direct; the committee to adjust the prices, rates of freight, etc.

The vice of this contract was said to be that by it "they control the price of coal in this extensive market and make it bring sums it would not command if left to the *natural laws of trade;* that it concerns an article of *prime interest* for many uses."

In *Craft* v. *McConoughy* (79 Ill., 346) a contract was entered into by grain dealers of a town, which on its

face indicated that they had formed a partnership for the purpose of dealing in grain, but the true object of which was to form a secret combination which would *stifle all competition* and enable the parties, by secret and fraudulent means, to control the price of grain, *cost of storage*, and expense of shipment. It was held that such an agreement was in restraint of trade, and consequently void as against public policy. The court said (p. 349):

> While these parties were in business in competition with each other they had the undoubted right to establish their own rates for grain stored and *commissions* for shipment and sale. They could pay as high or low a price for grain as they saw proper and as they could make contracts with the producer. *So long as competition was free the interest of the public was safe.* But the secret combination created by the contract *destroyed all competition* and created a monopoly against which the public interest had no protection.

In *Arnot* v. *Pittston Coal Co.* (68 N. Y., 558), the defendant and another company were corporations engaged in mining and selling coal at or near Pittston, Pa. The two companies entered into a contract by which the defendant agreed to take all the coal which the B. C. company should desire to send north of the State line, not to exceed 2,000 tons per month, at the regular market price, less a *commission* of 15 per cent, and the B. C. company agreed not to sell any coal to any party other than defendant to go north of the State line. The product of the B. C. company largely exceeded 2,000 tons per month. Defendant had made similar contracts with all other mining proprietors. The agreement was held

void as against public policy and in restraint of trade. The court said (p. 564):

> The purpose of the defendant in making the contract in question was to control the shipment and supply of coal for the Elmira market, so as to maintain *an unnatural high price of coal* in that market, and to *prevent competition* in the sale of coal therein.
>
> That a combination to effect such a purpose is injurious to the interests of the public and that *all contracts* designed to effect such an end are *contrary to public policy*, and therefore illegal, is too well settled by adjudicated cases to be questioned at this day.
>
> Every producer or vendor of coal, or other commodity, has the right to use all legitimate efforts to obtain the best price for the article in which he deals, but whenever he endeavors to *artificially enhance prices* by suppressing or keeping out of the markets the products of others, and to accomplish that purpose by means of a contract binding them to hold their supplies, such arrangements are even more mischievous than combinations not to sell under an agreed price, and combinations of that character have been held against public policy and illegal. If they should be sustained, the prices of articles of *prime necessity*, such as coal, flour, and other indispensable commodities might be *artificially raised* to a ruinous extent, far exceeding any natural result from the operation of supply and demand.

The evil effects of combinations to stifle competition are well stated in the case of *Commonwealth* v. *Carlisle*, (Brightley's Report, 36), where it is said:

> I take it, then, a combination is criminal wherever the act to be done has a tendency to *prejudice the public* or to oppress individuals by unjustly

subjecting them to the power of the confederates, and give effect to the purposes of the latter, whether of extortion or of mischief. According to this view of the law, a combination of employers to depress the wages of journeymen below what they would be if there was no recurrence to *artificial means* by either side, is criminal. The effort of an individual to disturb this equilibrium can never be perceptible nor carry the operation of his interest or that of any other individual beyond the limits of fair *competition;* but the increase of power of combination being in geometrical proportion to the number concerned, an association may be able to give an impulse not only oppressive to individuals, but mischievous to the public at large; and it is the employment of an engine so powerful and dangerous that gives criminality to an act which would be perfectly innocent, at least in a legal view, when done by an individual.

A contract by which two railway companies agree to exchange their traffic and not to connect with or take business from or give business to any railroad which may be constructed in Colorado or New Mexico after the date of the agreement, is held (*Denver R. R. Co.* v. *Atchison Co.*, 15 Fed. Rep., 650) against public policy and void. The court (Halleck, J.) says:

It is enough to say that it is a conspiracy to grasp commerce and suppress the building of railroads in two great States. Similar provisions have fallen under the condemnation of other courts, whose judgment of them has been clearly expressed. An association of carriers to regulate the price of freight, with provisions prohibiting the members from engaging in similar business out of the association, has a tendency to increase the price of carriage and to *suppress competition*, and is therefore illegal.

No stronger case can be found illustrating the rule, that in articles of *prime necessity* no combination or agreement whatever is permissible which tends, even remotely, to prevent competition, than the case of *Gibbs* v. *Consolidated Gas Company of Baltimore* (130 U. S., 397). There an agreement had been made between two gas companies. The contract recited that "active competition between the two companies had resulted in expense, annoyance, and loss of profits," and it was therefore provided that the price of gas to consumers should be placed at $1.75 per thousand cubic feet, with a rebate of 15 cents a thousand feet for payment within seven days, unless the rate should be changed by mutual agreement of the parties thereto in writing. The court held that such an agreement was against public policy as conspiracy in restraint of trade, saying:

> The supplying of illuminating gas is a business of *public nature* to meet a *public necessity*. It is not a business like that of the ordinary corporation engaged in the manufacture of articles that may be furnished by individual effort. (Citing authorities.)
>
> Hence, while it is justly urged that those rules which say that a given contract is against public policy should not be arbitrarily extended so as to interfere with the freedom of contract, yet in the instance of business of such character that it presumably can not be restrained *to any extent whatever* without *prejudice to the public interest*, courts decline to enforce or sustain contracts imposing such restraint, *however partial*, because in contravention of public policy.

It was pointed out by the court that the early English decisions were somewhat at variance with this rule, but

that they should not be regarded as controlling, since they were made "under a condition of things and a state of society different from those which now prevail."

The operation of the law of supply and demand and of competition may sometimes result in hardship in particular instances, but this does not alter the rule. As said in *De Witt* v. *Cloth Co.* (14 N. Y. Supp, 277):

> With the results naturally flowing from the laws of supply and demand, the courts have nothing to do; but when agreements are resorted to *for the purpose of taking trade out of the realm of competition*, the courts can not be successfully invoked.

The gist of the illegality is a *combination* with *power* to *affect* and *control prices*. Whether prices have in fact been raised is not controlling. In *Richardson* v. *Buhl* (77 Mich., 632), the court had under consideration a corporation organized for the purpose of controlling the manufacture and sale of matches, by means of which scheme all competition was stifled. The court said:

> It is no answer to say that this monopoly has *reduced* the price of friction matches. That policy may have been necessary to *crush competition*. The fact exists that it rests in the discretion of the corporation at any time *to raise the price to an exorbitant degree*. Such combinations have frequently been condemned by courts as *unlawful* and as *against public policy*.

This principle is tersely stated by this court in the Trans-Missouri Case, in the following language:

> In this light it is not material that the price of an article may be lowered. *It is in the power of the combination to raise it.*

These suggestions apply with peculiar force to the exchange here in question. If the defendant commission men have the power to regulate the prices to be charges as commissions, and which are paid by the shipper as a condition of shipment to this market, *who shall place a limit upon their power in this regard?* If they provide in their by-laws for a charge of $5 per head, who shall say that this is excessive? If the combination may not be permitted to exact a charge of $5 per head, how can it be said that they may agree upon 50 cents per head since the *vice* consists in the *combination* and in the *power lodged in the combination* to fix the price?

In *Santa Clara Lumber Co.* v. *Hayes* (76 Cal., 387), it appeared that the plaintiff and defendants, who were manufacturers of lumber, entered into a contract by the terms of which the defendants agreed to make and deliver to plaintiff during the year 1881 2,000,000 feet of lumber at $11 per thousand feet, and further agreed not to manufacture any lumber during such period for sale within a specified territory except under the contract, and to pay plaintiff $20 per thousand feet for any lumber manufactured and sold to parties other than the plaintiff. Similar contracts were made by plaintiff with other lumber dealers, and the sole object and consideration in entering into such contracts was to form a combination for the purpose of increasing the price of lumber, limiting the supply, and giving it control of the lumber market within the territory specified. It was held that

the contract was in restraint of trade and void. The court said:

> Among the contracts illegal under the common law, because opposed to public policy, were contracts in general restraint of trade; *contracts between individuals to prevent competition and keep up the prices of articles of utility.*
>
> Plaintiff had an undoubted right to purchase any and all the lumber it chose and to sell at such prices and places as it saw fit; but when, as a condition of purchase, *it binds its vendor not to sell to others*, under a penalty, it transcended a rule the adoption of which has been admitted by the experience and wisdom of ages as essential to the *best interests* of the community and as necessary to the protection alike of individuals and legitimate trade.

In *India Bag Association* v. *Kock* (14 La. Ann., 167) an agreement was entered into by several commercial firms by which they bound themselves for the term of three months not to sell any India cotton bagging except with the consent of a majority of them. It was held by the court that the combination was in restraint of trade, using this language:

> This is a case which never ought to have come before us. The agreement between the parties was *palpably* and *unequivocally* a *combination in restraint of trade*, and to enhance the price in the market of an article of *prime necessity* to cotton planters. Such combinations are contrary to public order, and can not be enforced in a court of justice.

When the business is of a public character, such as in the case at bar, as will be hereafter considered, the courts

with one voice condemn any efforts to prevent competition. Thus, in the case of *People* v. *Chicago Gas Trust Company* (130 Ill., 268) the various gas companies in the city of Chicago combined, the Chicago Gas Trust Company purchasing the stock in the other corporations. This was held to be a contract in restraint of trade, and as tending to create a monopoly. The court said, page 292:

> The business of manufacturing and distributing illuminating gas by means of pipes laid in the streets of a city is *a business of a public character.* It is the exercise of a franchise belonging to the State. The services rendered and to be rendered for such a grant are of a *public nature.* Companies engaged in such business *owe a duty to the public.* Any unreasonable restraint upon the performance of such duty is prejudicial to the public interest and in contravention of public policy.
>
> *Whatever tends to prevent competition between those engaged in a public employment or business, impressed with a public character, is opposed to public policy, and therefore unlawful.* Whatever tends to create a *monopoly* is unlawful as being contrary to public policy. (Citing authorities.)

It is immaterial what may be the ostensible and declared purposes of a combination. They may be ever so high sounding. The court looks at the matter of substance. Thus, in *People* v. *Sugar Refining Company* (54 Hun, 354) the ostensible purposes of that combination were to promote economy of administration, to give each refiner the benefit of all advantages and practices known to or used by others to improve the quality and diminish the cost of production, to furnish protection

against unlawful combinations of labor and against inducements to lower the standard of refining sugars. It was held nevertheless that the combination was unlawful and in restraint of trade. The court said:

> Where that (an effort to prevent competition) appears to be the fact, the agreement, association, combination, or arrangement, or whatever else it may be called, having for its objects the *removal of competition* and the *advancement of prices of necessaries of life*, is subject to condemnation of the law, by which it is denounced as a criminal enterprise.

Free competition is not only the rule of the law in respect to the sale of commodities, but also applies to combinations whose object is to affect the price of wages. Thus, in *People* v. *Fisher* (14 Wendell, 1), which is a leading case, the court says:

> Combinations and confederacies to enhance or reduce the prices of *labor* or of *any articles of trade or commerce* are injurious.

Combinations which "arrogate to themselves the exercise of powers destructive to the right of *free competition*" are illegal, and it is also said that "their aggregate power and influence imperil the free and pure administration of justice." (*National Harrow Company* v. *Quick*, 67 Fed. Rep., 130.)

Contracts in partial restraint of trade which have been upheld have usually been contracts involving the sale of a business whereby the vendor agrees for a certain limited period of time and within a certain limited territory not to engage in the same business again. Such contracts

are upheld upon the ground that there is a valid consideration for them and that such partial restraint is necessary for the proper enjoyment by the vendee of the good will purchased. Where, however, there is no consideration and no sale of business, as in the case at bar, the unbroken line of authorities is to the effect that the contract is void.

Thus, in *Nester* v. *Brewing Company* (Pa.) (29 Atl. Rep., 102) it was held that a combination among a number of brewers of a city to control the price of beer within the city was illegal, being in restraint of trade. The court said:

> Contracts in partial restraint of trade which the law sustains are those which are entered into by a vendor of a business and its good will with the vendee, by which the vendor agrees not to engage in the same business within a limited territory; and the restraint, to be valid, must be no more extensive than is reasonably necessary for the protection of the vendee in the enjoyment of the business purchased. But in the present case *there is no purchase or sale of any business*, nor any other valid circumstances giving to one party a just right to be protected against competition from the other. All the parties of the association are engaged in the *same business*, within the *same territory*; and the object of the association is purely and simply *to silence and stifle all competition as between its members*. No equitable reason for such restraint exists. (*Moore* v. *Bennett*, 140 Ill., 69.)

The same rule is thus stated in *Fox Steel Co.* v. *Schoon* (77 Fed. Rep., 29):

> A contract between manufacturers whereby, *without any sale of a business* of one to the other, one

party is prohibited from manufacturing of pressed metal any parts of a diamond car-truck frame is void as an unreasonable restraint of trade.

It is unlawful for any number of persons engaged in business, whether commission business or commerce, *to surrender the control over their own business* and vest it in trustees or directors or a committee. This was attempted in *Bishop* v. *American Preservers Co.* (157 Ill., 284), where it was held that:

> An agreement providing for the *welding together* of all the interests in a certain business into *one giant combination or partnership* under the absolute dominion and control of a board of trustees is void as contrary to public policy.

What better description of the live-stock exchange in this case can be given than to say it is the "*welding together of all the interests engaged in a certain business into one giant combination or partnership under the absolute dominion and control of a board of trustees.*"

No line of business is exempt from this rule. "Any combination or agreement, the object of which is to destroy or interfere with *free competition* in *any* line of business is void, *whether or not in the particular business it has the desired effect.*" (*Anderson* v. *Jett*, 89 Ky., 375.)

Any combination which has for its object "fictitious and unnatural" prices is declared to be "hazardous to the comfort of the community." (*Raymond* v. *Leavitt*, 46 Mich., 447.)

"Agreements which, in their necessary operation upon the action of the parties, tend to *restrain their natural rivalry* and *competition*, and thus to result to the disadvantage of the public or third parties, are against the

principles of sound public policy and are void." (*Hoffman* v. *McMullen*, 83 Fed., 372.)

In *Texas and Pacific Coal Co.* v. *Lawson* (34 S. W., 919) it appeared that the Texas antitrust act denounced as void and prohibited the enforcement at law or in equity of every contract whereby a combination of capital, skill, or arts is formed to create or carry out restrictions in trade or to prevent competition in the sale or purchase of commodities. It was held that this act rendered void a lease by a coal company of its saloon, in which the lessor covenanted not to permit the sale of liquor by anyone else on its lands and to issue to its employees checks in payment of wages, and redeem all checks it issued which the lessee might take in payment for liquors in consideration for the payment of rent of two-thirds of the profits of the business. In speaking of the statute the court said:

> *The statute ignores the common law distinction between restrictions which are reasonable and those which are not, and the commodities which are a prime necessity and those which are not.*

In *Texas Brewing Co.* v. *Anderson* (40 S. W., 737) it is said:

> A contract by which the buyers agree to keep for sale *no beer except that furnished by the seller*, and the seller agrees *to sell to no other persons at two certain towns*, is within the Revised Statutes of 1895, avoiding contracts to restrain trade or prevent competition in the sale of commodities.
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> *Texas Brewing Co.* v. *Templeman*, 38 S. W., 27.
> *Fuqua* v. *Pabst Brewing Co.*, 38 S. W., 29.
> *Texas Brewing Co.* v. *Meyer*, 38 S. W., 263.

In *National Harrow Co.* v. *Hench* (83 Fed. Rep., 36) it appeared that numerous manufacturers owned various United States patents of spring-tooth harrows, and agreed to organize a corporation; to assign to it all the patents then owned or thereafter to be acquired, and the good will of their business, and not to be interested in the manufacture or sale of such harrows except as agents or licensees of the corporation; that the corporation should license them to manufacture and sell, for their own account, subject to uniform terms and conditions, their respective makes; that each licensee should pay $1 for each such harrow manufactured and sold by him, and should receive paid-up stock in return for the patents and good will. Those who entered the agreement represented 70 per cent of the total manufacture and sales of the United States. It was held that the arrangement was an unlawful combination in restraint of trade. The court said:

> It is manifest, as well from the contract as from the *proofs outside of it*, that the purpose of the parties was to form a combination between the various manufacturers of these harrows to *prevent competition in business* and enhance prices, and such is the effect of their agreement. That such a contract would be *unlawful* seems *clear*. Citing
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> *Nester* v. *Brewing Co.*, 161 Pa. St., 473.
> *Carbon Co.* v. *McMillin*, 119 N. Y., 46.
> *Morris Run Coal Co.* v. *Coal Co.*, 68 Pa. St., 173.
> *Distilling Co.* v. *People*, 41 N. E., 188.
> *Straight* v. *Harrow Co.*, 18 N. Y. Supp., 233.
> *Harrow Co.* v. *Quick*, 67 Fed. Rep., 130.

Efforts to restrain competition are so universally regarded as hostile to the welfare of the people that

practically all of the States have enacted statutes prohibiting combinations in restraint of trade or to restrain competition, and prohibiting monopolies or attempts to monopolize. So odious had such combinations become that in 1891, prior to the Populist regime, the State of Kansas (laws of 1891, p. 294) had passed an act "prohibiting combinations to prevent competition among persons engaged in buying or selling live stock, and to provide penalties therefor." Section 1 is as follows:

> That it shall be unlawful for any two or more persons or corporations in this State, engaged in the business of buying or *selling live stock for others on commission, to enter into any combination, agreement, or arrangement for the purpose of or which tends to fix or control the charges or commissions to be demanded or received by such persons or corporations for their services for the sale of live stock.*
>
> SEC. 2. That it shall be unlawful for any person or persons, or corporation or corporations, *engaged in buying or selling live stock for others upon commission*, to continue with or enter into any agreement or arrangement with any person or persons, or corporation or corporations, engaged in the business of purchasing live stock, either for themselves or upon commission, either for themselves or as the agents of others, which shall have for its purpose or in any respect tends *to prevent full and free competition in the business of selling live stock upon commission for others*, or which has for its purpose or tends to the *fixing or maintaining of any sum as a minimum commission for services of selling live stock for others.* And it shall be unlawful for any person or persons, or corporation or corporations, doing business in this State to be or become a member of any society, association, or corporation whose by-laws provide for a

fixed or minimum commission for the selling of live stock for others, or whose by-laws *prohibit its members from purchasing live stock from persons who are not members of such society*, association or corporation; and all such by-laws of any society, association, or corporation doing business in this State *are hereby declared illegal and void*, and any person attempting, directly or indirectly, to enforce or make the same operative or effectual shall be deemed guilty of a misdemeanor; and any corporation which shall attempt to have any such by-laws enforced, or shall obey such by-laws and refuse to buy from others on account of such by-laws, shall, in addition to the penalties hereinafter provided for, forfeit its charter.

Section 3 provides penalties of fine or imprisonment, or both, for a violation of the act.

The State of Missouri also has a statute against "pools, trusts, and conspiracies," enacted April 2, 1891, amended April 11, 1895, and again amended March 24, 1897, which prohibits—

All arrangements, contracts, agreements, or combinations between all persons or corporations, or between persons, or any association of corporations and persons, designed or made with a view to lessen or which shall tend to lessen full and free competition in the importation, manufacture, or sale of any article, product, or commodity in this State, and all arrangements, combinations, contracts or agreements, whereby or under the terms of which it is proposed, stipulated, provided, agreed or understood that any person or association of persons or corporations, doing business in this State, shall deal in, sell or offer for sale in this State any particular or specific product or commodity, and shall not, during the

> continuance or existence of such arrangement, combination, contract or agreement, deal in or offer for sale in this State any competing article, product or commodity.

The act also provides penalties for "any corporation or any partnership or individual, or other association of individuals whatsoever, who shall create, enter into, or become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons to regulate or fix a price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product in mining, or any article or thing whatsoever, etc."

This *very exchange*, with its *present by-laws*, was held to be *illegal* and its members "*criminals*" in *Greer* v. *Payne* (46 Pac. Rep., 190). The actual and real purpose of its rules and by-laws, says the court:

> Is rather to *prevent competition* along certain lines among those engaged in the *live stock commission business*, and to *maintain uniform minimum prices for their services*. * * * These and other rules of a like character are apparently the *main features* of this organization which makes a *membership therein so valuable*. The exchange makes no pretense of giving direct aid to its members in securing business, but leaves that to their own individual efforts. Its profitableness, however, is no doubt greatly augmented by reason of the *fixing of charges by a combination which is powerful enough to monopolize such services*. An organization having such objects is an *unlawful combination*, which is expressly prohibited by law. * * * The organization itself will

continue with unimpaired ability to violate the law and with impunity to trample upon the public interests. These parties have, by their voluntary acts, created an organization which the law condemns and *with which no man can be connected without being answerable to the laws of his State as a criminal.*

We submit that the following remarks of the lower court in this case are pertinent and wholly warranted by the evidence:

> The *object* and *purpose* of the exchange *is written across its face where all can read.* It is to *control* and *monopolize* the *entire business of buying and selling live stock at the Kansas City stock yards.* It is clearly *a combination to restrict, control, and monopolize that class of trade and commerce.* The defendants declare that the rules, regulations, and prices for doing the business are all reasonable and fair and for the best interests of buyer and seller. Possibly that is so, although it is not apparent, looking at the interests of the stock grower or purchaser, why the *number of solicitors* of business should be limited to three for each firm, or why there should be a *restriction in telegraphic information* as to the state of the market, or why he should be compelled to pay a commission of *50 cents* a head on cattle when he paid *25 cents before the exchange was organized*, or why there should be discriminating charges on stock from different localities.

The supreme court of Illinois, as recently as last December, held that certain rules of the Chicago Live Stock Exchange (identical with one of the rules now under consideration) were illegal and void, because "*it trammels competition and prohibits an individual from contracting and engaging in business and using such agencies and*

means as he may desire which are not hostile to general law," and leave was granted to file an information in the nature of *quo warranto* to forfeit the charter of the corporation.

Much is said in appellant's brief upon the subject of exchanges, they apparently basing their argument of the validity of this exchange upon the fact that exchanges have always existed, and that they are necessary to promote the trade and commerce of the country, and therefore can not be unlawful. This contention will be considered under another heading. At present, however, we may with propriety call the court's attention to the fact that there appears to be no magic in the word "exchange" which exempts its members from such punishment as is visited upon ordinary offenders against law. It seems to be the rule of various courts that *even as to members of an exchange* the question after all is as to the *validity* and *legality* of their by-laws and proceedings, and only such will be upheld as are *within the pale of the law.*

That the fact that certain persons organized under the name of an exchange did not afford them immunity from the law prohibiting contracts in restraint of trade was stated in *People* v. *Milk Exchange* (N. Y. Ct. of App., 39 N. E., 1062). There a company composed of a large number of local milk dealers incorporated as a milk exchange for the ostensible purpose of buying and selling milk at wholesale and retail, but they only acted as the seller's agents to find purchasers, charging the former *a commission for such service,* and adopted and acted under a by-law giving the board of directors the power to fix a price to be paid by the stockholders for milk.

The court of appeals of New York held this to be an *unlawful combination*. The court disposed of the case in this language:

> It may be claimed that the purpose of the combination was to reduce the price of milk, and that, it being an article of food, such reduction was not against public policy. *But the price was fixed for the benefit of the dealers and not the consumers*, and the logical effect upon the trade of so fixing the price by the combination *was to paralyze the production and limit the supply*, and thus leave the dealers in a position to *control the market*, and, at their *option*, *to enhance the price to be paid by the consumers*. This brings the case within the condemnation of the authorities to which we have referred.

Again, in *People* v. *Sheldon* (N. Y. Ct. of App., 34 N. E., 785), certain persons were convicted of conspiracy to commit acts injurious to trade, although they were associated together under the name of "The Lockport Coal Exchange." The beneficent purposes and business of this exchange were to "foster trade and commerce in coal, wood, and all the products appertaining to the same; to protect and secure freedom from unjust and unlawful exactions; to diffuse accurate and reliable information as to the retail coal trade, and of the responsibility and standing of customers, and other matters, among its members, for their mutual protection and benefit; to settle differences between its members; to produce uniformity and certainty in the customs and usages of such trade; to promote a more enlarged and friendly intercourse between merchants and dealers in coal and wood, and to provide, establish, and maintain such rules and regulations as

may be proper and necessary for the mutual cooperation, interest, and protection of the retail dealers in coal and wood in the city of Lockport, and in furthering the coal-trade interests generally."

The court disposed of the case in the following language:

> No member was permitted to sell coal *at less than the price fixed by the exchange*. The organization was a carefully devised scheme to *prevent competition* in the price of coal among the retail dealers, and the *moral and material power of the combination* afforded *a reasonable guaranty that others would not engage in the business in Lockport except in conformity with the rules of the exchange*. The cases of *Hooker* v. *Vandewater* (4 Denio, 349), and *Stanton* v. *Allen* (5 Denio, 434), are, we think, decisive authorities in support of the judgment in this case. They were cases of combinations between transportation lines on the canals to maintain rates for the carriage of goods and passengers, and the court, in those cases, held that the agreements were void, on the ground that they were agreements to *prevent competition*; and the doctrine was affirmed that agreements having that purpose, made between independent lines of transportation, were, in law, agreements injurious to trade. In those cases it was not shown that the rates fixed were excessive. In the case in 5 Denio, the judge delivering the opinion referred to the effect of the agreement upon the public revenue from the canals. This was an added circumstance tending to show the injury which might result from agreements to raise prices or prevent competition.

In *United States* v. *Jellico Coal Co.* (46 Fed. Rep., 432), the Government brought suit under the antitrust act

against the members of the Nashville Coal Exchange, and, notwithstanding the fact that the defendants were organized as an "exchange," they were held to be guilty of a *violation of the act of July 2, 1890.* There an agreement was entered into between coal-mining companies operating chiefly in Kentucky, and dealers in coal in Nashville, Tenn., creating a coal exchange to advance the interests of the coal business, "to treat all parties to the business in a fair and equitable manner, and to establish the price of coal, and change the same from time to time; by which it was agreed that the price of coal at the mines should be $4\frac{1}{2}$, the freight being 4 cents, and the margin of the dealer should be $4\frac{1}{2}$ cents, making the price to the consumer 13 cents, and that, whenever the price of the coal should be advanced beyond an advance in freights, one-half of the advance should go to the mine owner and the other half to the dealer, and a penalty was provided by fine of any member selling coal at a less price than the price fixed by the exchange; and by which it was forbidden for owners or operators of mines to sell coal to any person other than members of the organization, and for dealers to purchase of miners who were not members, but exempting coal used for manufacturing and steamboat purposes from the prices prescribed, until all the mines tributary to that market should come into the exchange, or until the exchange should control the prices of coal used by manufacturers.

The court held that this agreement was in violation of the act of July 2, 1890. *It is to be observed that this exchange seems to have been formed on the same general*

lines as the Kansas City Live Stock Exchange. The court says:

> The exchange ordains that "owners or operators of mines shall not sell or ship coal to any firm, person, or corporation in Nashville or West Nashville or East Nashville who are not members of this exchange, and dealers shall not buy coal from anyone who is not a member of the exchange." The coal trade is confined, so far as the market supply is concerned, to transactions between the *miner and dealer*, the prices are fixed by them, and the *miner and dealer only are eligible to membership.* The miners of the concern *can not sell to any dealer in or near Nashville who is not a party to the agreement*, nor can such dealer *purchase* coal of any miner anywhere *who is not a member of the body.* The operations of both are *confined within the membership.* So far as Nashville is concerned they can not go to cheaper or more favorable markets, or deal with those who would give more favorable terms. The restraint is *positive and undeniable.* Moreover, in the first section of the by-laws of the exchange it is asserted that "all coal used for manufacturing and steamboat purposes shall be exempt from prices made by this exchange until all mines tributary to this market shall become members of the exchange, or until the exchange can control the prices to govern coal used by manufacturers." This clearly indicates the purpose of the association to be to control the price of coal in the Nashville market used in manufacturing and in steamboats whenever it could; that the miners of coal tributary to Nashville were all expected to become members of the exchange, whereupon the prices of coal could be fixed absolutely, and the necessary inference from this declaration and the entire organic structure of

> the body is that it felt strong enough already to regulate and establish the prices of domestic coal in that market, to a large extent at least, and that this exchange might now *monopolize the business of dealing in domestic coal in the Nashville market*, and in the future monopolize by and confine to its membership the *entire trade in coal at that point*. It seems to me that the purposes and intentions of the association could hardly have been more successfully framed to fall within the provisions of the act of July 2, 1890, had the object been to organize a combination, the business of which should subject it to the penalties of that statute, and that there is no need of authorities to sustain such view of the case. Regarding the act as constitutional I see no way for the defendants to escape its condemnation.

That the rules of law prohibiting combinations in restraint of trade and commerce apply to *services* as well as to other employments is specifically held in *People* v. *Medical Society* (24 Barb., 570). There a medical society established a tariff of fees for medical services to be performed by its members, and fixed a minimum salary to be received by any member who should be appointed to any public office in a professional capacity, and adopted a resolution declaring that it should be dishonorable for any member of the society to accept any payment or perform any services contained in such tariff of prices at a less sum than it was therein provided; and subsequently, in pursuance of the by-laws to that effect, *expelled* a member for violation of that regulation.

It was held that the regulation was *void*, as being unreasonable, as being against public policy, and contrary

to law, and that the expulsion of the member was unauthorized and illegal, and that a mandamus would lie directing that he be restored or recognized as a member of the medical society.

The court said:

> A by-law must not be at variance with the general law of the land. It must be reasonable and adapted to the purposes of the corporation. * * * All the purposes of the corporation can be accomplished without interfering in the least with the *natural and private rights* of each member to *agree* with the public authorities or others for *such compensation for his services as he may desire*. The rule established by the society is *unreasonable*—not that it fixed an unreasonable price for the specific service (as to that I do not know), but it is unreasonably *restraining and oppressive upon its members*. It interferes with their private rights.
>
> The regulation was not only unauthorized by the law, but it is in conflict with well-settled principles of law. It was the result of *a combination to coerce the public authorites of Erie County and the city of Buffalo to make a certain compensation for certain medical services not less than a minimum sum fixed*. Such a *combination* is, I have no doubt, *unlawful at common law*. It is in restraint of the rights of the public authorities and the individual members of the society. * * * A physician entirely competent may be *willing* to render the service for *half the sum fixed in the rules*, and yet if he adheres to the regulation he must decline the employment. The entire regulation is in conflict with the *law of the land* and can not be sustained. It conflicts with the *law and its policy in relation to contracts and trade. The law promises and encourages great freedom in contract and in trade and is constantly inviting competition.*

No matter what form the restriction may take, nor how aptly worded may be the ostensible purposes of the organization, the crucial test is *whether competition is destroyed or whether the tendency of the organization or association is to prevent competition among its members.*

Milwaukee Masons and Builders' Association v. *Niezorowski* (Wis.) (70 N. W., 166) strongly illustrates this doctrine. There the by-laws of a builders and masons' association, the membership of which included sixty out of seventy mason contractors in a city, required the members to pay to the association 6 per cent of all contracts taken by them and to submit all bids for work first to the association, and provided that the lowest bidder should add 6 per cent to his bid before it was submitted to the owner or his architect. The organization was held contrary to public policy and its by-laws void.

The court said:

> The manifest purpose of the private by-laws was, by means of the combination thus effected, *to suppress fair and free competition in bidding for building contracts in Milwaukee*, and by such combination and method of bidding, upon its face apparently fair and free from objection, but in fact unfair and delusive, to compel owners to pay for the erection of buildings the sum of 6 per cent in excess of what they would otherwise be obliged to pay if they were fairly let to the lowest bidder uninfluenced by such combination. It seems to us that the *restraint* put upon the rights of proprietors by the provisions of these by-laws or rules, as well as the entire scheme thus disclosed, is *contrary to public policy, and therefore void.* All such arrangements tend to deprive the public of the *services of parties in the employments*

and capacities in which they are most useful, and they tend to expose the public evils of monopolies. (*Richards* v. *Seating Co.*, 87 Wis., 512.)

The combination in question is contrary to public policy and strikes at the interests of those of the public desiring to build, and between whom and the association or the members thereof there exists *no contract relations*. While all reasonable stipulations and means to protect labor and trade are laudable, we must hold that the means here sought to be employed are such as the law will not sanction. We must consider what may be done under such an agreement and the result which it will necessarily produce. As already pointed out, the operation of this combination under these private laws is to *suppress free and fair competition* in bidding for contracts, and by delusive and deceptive means members of the association are enabled to exact from owners a higher price for buildings than they would otherwise have to pay.

The vice of an association formed for the purpose of drawing to itself all the business in a particular line is forcibly illustrated and strongly condemned in *Jackson* v. *Stanfield* (36 N. E., 345), under the following state of facts:

The retail lumber dealers' association of Indiana, by its laws, gave an active member a claim against a wholesaler for selling to a person not a "regular dealer in such member's community," and provided for a hearing of the claim by a committee, and required members *to refuse to patronize a wholesaler who ignores the committee's decision*. The plaintiff, who was not a regular dealer, underbid defendant on a contract, but the wholesalers *refused to sell to him* and he was obliged to abandon the

contract because defendant, an active member of the association, had previously enforced a claim against a wholesaler who had sold to plaintiff, and expressed an intention of continuing to enforce such claims. It was held that the defendant was liable for the amount which plaintiff lost by abandoning his contract and would be perpetually enjoined from making a claim under the by-laws of the association against any person who sold to plaintiff.

The court said:

> They [the rules of the association] *extend to and reach any wholesale dealer in the United States with whom the threat to withdraw the trade of 150 retail dealers can have weight.* It is shown in the finding that Michigan is the source from which most of the lumber in northern Indiana is procured, and that the rules of the association are published in pamphlet form and sent to every wholesale dealer in the United States. The retail dealers who organized this association in question are members of various cities and towns where they are located. They have lumber yards containing stock in quantity and quality suited to and commensurate with the wants of the consumers in their several localities. These gentlemen are prominent, wealthy, and influential citizens of our State, *whose power* from the elevated stations they occupy, so exercised, *enables them to control the wholesale dealers of the United States against the agents and brokers within their own territory, and effectually drive them out of business.* It is idle to say that the victim of such a combination is only incidentally affected thereby. *The object of the association and the result attained is a monopoly of trade by the owners of yards, and the broker is simply ignored by the wholesale dealers.*

A combination between two classes of business men whose interests are *naturally antagonistic* is especially vicious, as shown in the preceding case. It is bad enough for members of a certain class—for example, commission men—to combine to regulate their charges, and say that *no one else shall engage in the same business without joining their association and consenting to rules which are in themselves illegal*, but it is *far worse* and *far more reprehensible*, from a legal standpoint, when a class of men—as, for example, commission men—form a combination *with the very persons with whom they have to deal as business antagonists, and so harmonize the conduct of their business and provide that none but their members shall enjoy such trade.*

It must be constantly borne in mind that the defendant association is not only composed of *commission men*, but that it also includes and comprehends *all of the packing houses*. The interests of the commission men and of the packing houses are naturally *antagonistic* when *unaffected by artificial conditions*. It is to the interest of the packing houses to deal with the commission man who furnishes *the most efficient service* and offers his wares *at the lowest prices* regardless of the question of his membership in any association. The two classes of persons naturally deal at arms length.

Again, these two classes of persons—commission men and packing houses—comprise substantially *the entire field of the business of buying and selling*. The affidavits show that 80 or 90 per cent of the live stock received at the Kansas City market *is purchased by the packing houses*. If the packing houses decline to deal with a

commission man, *he is practically shut out of the market.* He may as well close up his office, for no matter how enticing the bargains are he may offer he is unable to make a sale.

Combinations which comprise substantially *the demand and the supply, the purchaser and the consumer, the buyer and seller,* and which undertake to *exclude from the market* all persons who are *nonmembers* are especially vicious in their conception and operation, and no court has yet been found to sustain a combination of that class. Especially is this true when, as in the case at bar, the combination undertakes to rule its members with *by-laws which are void by the statute as well as by common law.*

Such an association received the just condemnation of the law in *Judd* v. *Harrington* (34 N. E., 790), where an agreement was entered into somewhat similar to the one at bar. There an association was formed among sheep brokers "to protect their interests and prevent competition, each to pay the treasurer a certain sum for every head sold, and to receive an arbitrary proportion of the sum accumulated, made in furtherance of a contract with a similar and contemporaneously formed butchers' association, whereby the brokers were to slaughter no sheep, and sell only to members of the butchers' association, or forfeit so much per head sold to others, and the butchers were not to buy elsewhere under a like penalty."

In this case the parties to the agreement did not undertake, directly, to fix the price of the commodity. Their agreement was to restrict the purchases and sales to the members of their associations, and *to divide their commissions upon a certain basis.*

The court said:

> The *brokers were to sell only to the butchers* and the *butchers to buy only from the brokers.* The owners of sheep, or the drovers or consignees, who had them for sale, and the public who were interested in the price of meat as an article of food, *might have been prejudiced* by the agreement. *Whether they were in fact is not material.* The real purpose and intent of the agreement was to suppress competition in an article of food, and as such agreements tend to enhance the price, they are regarded *as detrimental to the public interest and forbidden by public policy.* That such agreements are illegal and void has been settled by the decisions of the courts from the earliest times. These authorities are to be found in the learned opinion below and upon the briefs of counsel in this court, but I do not consider it necessary to refer to them further or to discuss the question at length, for the reason that at this very term of the court the whole question has been examined, elaborately discussed, and decided in another case. (*People* v. *Sheldon*, 34 N. E., 785.)

Much emphasis is placed by counsel upon the apparent and ostensible purposes of this exchange "to promote honorable conduct," etc., among its members; but the court has only to look beyond the *apparent* purpose and to see that the *real purpose* is to prevent competition. As said by the Kansas court of appeals, in *Grace* v. *Payne* (46 Pac. Rep., 190), speaking of this very exchange, "It is impossible to read the articles of association and by-laws of this exchange *without being convinced of the fact that the principal inducement is not 'to promulgate and enforce among the members correct and high moral principles in the transaction of business,' as stated in the*

articles, but that it is rather to prevent competition along certain lines among those engaged in the live stock commission business, and to maintain uniform minimum prices for their services."

Courts have gone to the utmost limit in upholding associations of workingmen for the purpose of increasing their condition, securing better wages, etc., but even in this class of cases, where there is a contract or a combination between the *laborers as a class* and the *employers as a class*, which has for its purpose, direct or indirect, to *exclude from membership*, and so *from securing employment*, persons who are nonmembers, the courts have not hesitated to pronounce them *illegal*. This is well illustrated in the very recent case of *Curran* v. *Galen* (N. Y. Ct. of App., 46 N. E., 297), where the facts were as follows:

There was in Rochester, N. Y., a laboring organization known as "Brewery Workingmen's Local Assembly, Knights of Labor," composed of workingmen. There was also an association known as "The Ale Brewers' Association," constituting the persons engaged in operating breweries. The latter entered into an agreement with the Local Assembly, Knights of Labor, to the effect that all employees of the brewery companies belonging to the Ale Brewers' Association should be members of the Brewery Workingmen's Assembly, Knights of Labor, and that no employee should work for a longer period than four weeks without becoming a member. The plaintiff was retained in the employ of the Miller Brewing Company for more than four weeks after he was

notified that the provisions of said agreement required him to become a member of the Local Assembly, Knights of Labor. He was then requested to become a member, and upon his refusal to comply, certain members of the assembly, as a committee duly appointed for that purpose, notified the officers of the Miller Brewing Company of that fact, and the plaintiff was thereupon discharged, in accordance with the agreement. It was held that he was entitled to recover damages for the wrongful discharge.

The court said:

> If such an agreement is lawful, then it must be conceded that the defendants are entitled to set it up as a defense to the action, forasmuch as they allege what they did was in accordance with its terms. In the general consideration of the subject, it must be premised that the organization or the co-operation of workingmen is not against any public policy. Indeed, it must be regarded as having the sanction of law when it is for such legitimate purposes as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate. But the social principle which justifies such organizations is departed from when they are so extended in their operation *as either to intend or to accomplish injury to others.* Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be *to hamper or to restrict that freedom*, and through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their positions and of deprivation of employment, *then that purpose seems clearly unlawful, and militates*

against the spirit of our Government and the nature of our institutions. The effectuation of such a purpose would conflict with that principle of public policy *which prohibits monopolies and exclusive privileges.* It would tend to deprive the public of the *services* of men in useful employments and capacities.

Every citizen is deeply interested in the strict maintenance of the constitutional right freely to pursue a lawful avocation under conditions equal as to all, and to enjoy the fruits of his labor without the imposition of any *conditions* not required for the general welfare of the community. The candid mind should shrink from the results of the operation of the principle contended for here; for there would certainly be a *compulsion* or a *fettering of the individual glaringly at variance with that freedom in the pursuit of happiness which is believed to be guaranteed to all by the provisions of the fundamental law of the State.* The sympathies of the fellow feeling which, as a social principle, underlies the association of workingmen for their common benefit, are not consistent with a purpose to oppress the individual who prefers by single effort to gain his livelihood. If organization of workingmen is in line with good government, it is because it is intended as a legitimate instrumentality to promote the common good of its members. If it militates against the general public interest, if its powers are directed toward the *repression of individual freedom*, upon what principle shall it be justified?

The court here cites from *Reg.* v. *Rowlands* (17 Adol. & E.) (N. S.) 671) and continues:

> The *organization* of the local assembly in question by the workingmen in the breweries of the city of Rochester may have been *perfectly lawful* in its general purposes and methods, and may otherwise wield

power and influence usefully and justly, for all that appears. It is not for us to say, nor do we intend to intimate to the contrary; but so far as a purpose appears from the defense set up to the complaint, that *no employee of a brewing company shall be allowed to work for a longer period than four weeks without becoming a member of the Workingmen's Local Assembly*, and that a *contract* between the local assembly and the Ale Brewers' Association *shall be availed of to compel the discharge of the independent employee*, it is in effect *a threat to keep persons from working at the particular trade*, and to procure their dismissal from employment. While it may be true, as argued, that the contract was entered into on the part of the Ale Brewers' Association, with the object of avoiding disputes and conflicts with the workingmen's organization, that feature and such an intention can not aid the defense nor legalize a plan of *compelling workingmen not in affiliation with the organization to join it* at the peril of being *deprived of their employment* and of the means of making a livelihood. In our judgment the defense pleaded was insufficient in law upon the face thereof, and therefore the demurrer thereto was properly sustained. The judgment appealed from should be affirmed, with costs. All concur, except Haight, J., not sitting.

It is a universal rule that combinations, whether of workmen or tradesmen, become illegal when they exert any influence upon nonmembers *which amounts in law to intimidation or coercion*. It is not necessary that there should be *actual violence* or a threat of personal injury. It is sufficient if, by means of *moral coercion*, the nonmember is deprived of his constitutional right to carry on his business.

The mere refusal by an association, which controls the output of a commodity, to sell to dealers except on condition that such dealers handle no other goods than those manufactured by such corporation or association, is in itself *intimidation* or *coercion* within the rule.

In *People* v. *Duke* (44 N. Y. S., 336) it is said that "such intimidation of dealers as will render unlawful an attempt to secure their exclusive trade may be exercised by the refusal of a corporation controlling most of the cigarette output and whose goods are necessary to profitable business of dealers in cigarettes, *to sell to dealers except on condition that they handle no other cigarettes and maintain excessive prices.*"

In *State* v. *Stewart* (59 Vt., 273) it is held that "The labor and skill of the workman, the plant of the manufacturer, and the equipment of the farmer are in an equal sense property; every man has the right to employ his talents, industry, and capital as he pleases, free from the dictation of others; if two or more persons combine *to coerce his choice in this behalf*, it is a criminal conspiracy, whether the means employed are *actual violence* or a *species of intimidation that works upon the mind.*"

In *State* v. *Dyer* (67 Vt., 690) it is said that "a combination of two or more persons to constrain an employer to discharge a particular workman by threatening to prevent his obtaining other workmen, or to constrain a workman to join certain associations *by threatening to prevent him from obtaining employment unless he does so*, is a criminal conspiracy at common law."

In *State* v. *Donaldson* (32 N. J. Law, 151) it was held to be an indictable conspiracy for several employees

to combine and notify their employer that *unless he discharged certain enumerated persons they would in a body quit his employment.* The court said:

> There is this *coercion;* the men agreed to leave simultaneously in large numbers and by preconcerted action. We can not close our eyes to the fact that the threat of the workmen to quit the manufacturer under these circumstances *is equivalent to a threat* that unless he yield to their unjustifiable demand they would derange his business and thus cast a heavy loss upon him. The workmen who make this threat understand it in this sense and so does their employer.

In *Steamship Co.* v. *McKenna* (30 Fed., 48) the court said:

> All combinations and associations designed *to coerce workmen to become members,* or to *interfere with, obstruct or vex or annoy them in working or obtaining work because they are not members, or in order to induce them to become members,* * * * are illegal combinations or associations, and all acts done in furtherance of such intentions by such means and accompanied by damages, are actionable.

Displaying banners in front of a person's place of business, with inscriptions calculated to injure his business, and to deter workmen from entering into or continuing in his employment, is intimidation. (*Sherry* v. *Perkins,* 147 Mass., 212.)

In *Vegelahn* v. *Guntner* (44 N. E., 1077) it is said:

> Intimidation is not limited to *threats of violence,* or of personal injury to persons or property; *it has a broader signification; and there also may be a moral intimidation which is illegal. Patrolling or picketing,* under the circumstances stated in the report, are

elements of intimidation like those which are found in *Sherry* v. *Perkins* (147 Mass., 212).

In *The Master Stevedores' Association* v. *Walk* (2 Daly, 1) the court says (p. 13):

> Forming any association or combination for the purpose of *compelling journeymen or employers to conform to any rule, regulation, or agreement fixing the rate of wages*, to which they are not parties, by the imposition of penalties, by agreeing to quit the service of any employer who employs a journeymen below a certain rate, unless the journeyman pays the penalty fixed by the combination, or by threats or intimidation, violence or other unlawful means, is a conspiracy, for which the parties entering into it may be indicted.
>
> *State* v. *Glidden*, 55 Conn., 46.
> *Flood* v. *Jackson* (1895), 2 L. R., Q. B. D., 21.
> *Lyons* v. *Wilkins* (1896), 1 L. R., Ch. Div., 811.

It needs but a glance at the record to satisfy the court *that coercion and intimidation*, as herein defined, have been practiced by the defendants. In the first place, the *commission men* and the *packers* combine unlawfully, and in defiance of both statutory and common law establish rates of commission and make other regulations which are in restraint of trade. Not satisfied with this, by common consent they place an interpretation upon their by-laws by which it is agreed that *no commission man shall be permitted to do business at the Kansas City yards except he be a member of their illegal combination.* The practical construction placed upon a contract by the acts and conduct of the parties is controlling.

> *Merriam* v. *United States*, 107 U. S., 437.
> *Chicago* v. *Sheldon*, 9 Wall., 50.

Heinback v. *Stewart*, 11 Wall., 566.
Knox County v. *Bank*, 147 U. S., 91.
Topliff v. *Topliff*, 122 U. S., 121.
United States v. *Gibbons*, 109 U. S., 200.
Lowber v. *Bangs*, 2 Wall., 728.

If a person undertakes the commission business without first joining their organization, as in the case of Mr. Harris and in the case of Miss Goodwin, he is promptly notified to take out a membership or cease doing business. Appellants say in their brief (p. 33), speaking of Mr. Harris, that "on being requested to take out such membership he seems to have concurred in the propriety of the suggestion and acted accordingly." This same language might have been used with equal felicity had Mr. Harris been an inhabitant of some wild western town and had been requested to leave by the local vigilance committee. He probably would have "concurred in the propriety of the suggestion and acted accordingly" from the same motives of necessity.

It is the established fact, as amply shown by the affidavits, that *no person has ever been able to do business as a commission man at the Kansas City stock yards, in the face of the combined opposition of the exchange*, with the single exception of Greer, Mills & Co., who are temporarily protected by an order of court. It seems that when the *packing houses* and members of the exchange are protected against the enforcement of penalties by order of court, so that trading with nonmembers is not a crime against the by-laws, they are perfectly willing to do so. It is only *the coercion of the rules and its heavy penalties that prevent them from doing so at all times.*

The *coercion* exercised by the defendant exchange *in preventing nonmembers from doing business, for the purpose of compelling them to join the exchange*, or to cease doing business as nonmembers, is *in itself* illegal. In contemplation of law it is *malicious*, and the malicious attempt to injure the business of another is illegal even at common law.

Malice does not necessarily imply ill will. It may consist in a purpose to injure the business of another by compelling him to join an association.

The following is quoted from *Bowen* v. *Hall* (6 Q. B. D., 333) which is cited with approval in *Angle* v. *Ry. Co.* (151 U. S., 1, 14):

> If the persuasion be used for the *indirect purpose of injuring the plaintiff or of benefiting the defendant at the expense of the plaintiff*, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act, if injury ensues from it. (*Temperton* v. *Russell* (1893), 1 Q. B., 715.)

Lord Justice Lopes, in the last-mentioned case, said:

> The law appears to me to be that a combination by two or more persons *to induce others not to deal with a particular individual or enter into contracts with him, if it is done with an intent to injure that individual and if he is thereby injured, is an actionable wrong.*

Lord Justice Smith said:

> In my judgment it is perfectly clear law that to induce a person who has made a contract with another to break that contract *in order to hurt the person with whom it has been made, to hamper him in*

> *his trade or to put undue pressure upon him*, or to procure some indirect advan age for the person himself, *is, in point of law, to do it maliciously.*

Even persuasion and social pressure constitutes malice within the meaning of the rule. In *Vegelahn* v. *Guntner* (Mass.) 44 N. E., 1077) it was held that "the maintenance of a patrol of two men in front of plaintiff's business, in furtherance of a conspiracy to prevent, whether by force and intimidation or *by persuasion and social pressure*, any workmen from entering into or continuing in his employment, will be enjoined, *though such workmen are not under contract to work for plaintiff.*"

The court said:

> Intimidation is *not limited* to *threats of violence* or of *personal injury to person or property:* it has a broader signification, and there may also be a *moral intimidation* which is *illegal.* Patrolling or picketing under the circumstances stated in the report are *elements of intimidation* like those which were found to exist in *Sherry* v. *Perkins* (147 Mass., 212). * * *
>
> A combination among persons simply to regulate their own conduct is within an allowable competition and is lawful, although others may be indirectly affected thereby; but a combination to do injurious acts expressly directed to another by way of *intimidation or constraint, either of himself or persons employed or seeking to be employed by him*, is outside of allowable competition, and is unlawful.

In this case *Commonwealth* v. *Hunt* (4 Met., 111), *Bowen* v. *Matheson* (14 Allen, 499), *Steamship Co.* v. *McGregor* (1892) (App. Cas., 25), much relied upon by appellants, are quoted and relied upon in the *dissenting opinion.*

In *Barr* v. *Essex Trades Council* (53 N. J. Eq., 101) it is said that "malicious injury to a person's business is actionable. An injury to the business of another is malicious and actionable if done *intentionally and without legal excuse*."

Sir William Earle, in his work entitled The Law Relating to Trades Unions, says (p. 12):

> Every person has a right under the law, as between him and his fellow-subjects, to full *freedom in disposing of his own labor* or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom and is prohibited from any *obstruction* of the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another, in the exercise of the right comprised within this description, done, not in the exercise of the actor's own right, *but for the purpose of obstruction*, would, if damage should be caused thereby to the party obstructed, be a *violation* of this prohibition, and the violation of this prohibition by a single person is a wrong, to be remedied either by an action or indictment, as the case may be. It is equally wrong whether it be done by one or many, subject to this observation: That a combination of many to do wrong in a matter where the public has an interest is a substantive offense of conspiracy.

Judge Taft said (54 Fed. Rep., 730–738):

> Such combinations are said to be unlawful conspiracies, though the acts in themselves and considered singly are innocent, when the acts are done with malice; that is, *with intention to injure another without lawful excuse*.

In *Bowen* v. *Hall* (6 Q. B. D., 330, 333), it is said:

> If the persuasion be used for the indirect purpose of injuring the plaintiff or benefiting the defendant at the expense of the plaintiff, it is *a malicious act*, which is in law and in fact a wrong act.

Malice in this connection does not necessarily imply hatred or a malicious motive. "When we speak in this connection of an act done with *a malicious motive*, it does not necessarily imply that the defendants were actuated in their proceedings *by spite or malice against the complainant*, Mr. Barr, in the sense that their motive was to injure him personally, but that they desired to *injure him in his business* in order to force *him not to do* what he had *a perfect right to do*. They only wished by *crippling his business* to *compel him to accede* to their views as to materials he should use in the make-up of his paper. They claim, in fact, that they had no intention to injure the business of the complainant, and that their only desire was for the protection of themselves."

Delz v. *Winfree*, 80 Tex., 400.
Olive v. *Van Patten*, 25 S. W., 428.

Malice is thus defined by Lopes, L. J., in *Flood* v. *Jackson* (2 Q. B. D. (1895), 21–40):

> I do not propose to attempt exhaustively to define malice, but I do say this, as being applicable to the present case, that *where a person willfully does an act to the injury of another without any lawful excuse, that is evidence of malice.*

It seems very clear that the by-laws of the defendants operate upon the business of would-be competitors in a manner which the law deems malicious. The willful intention, *without legal excuse*, to *deprive persons of their*

lawful right to engage in the business of commission merchants is in itself a conclusive evidence of such intent.

If further evidence were needed, it may be found in the incidents of the repeated, persistent, and continued efforts of the exchange to prevent Greer, Mills & Co., even after their withdrawal from the exchange, *from pursuing a lawful calling.* The facts in the case may be summed up in the apt language of the lower court:

> The testimony discloses *several instances* of parties attempting to enter the field and do business there without joining the exchange; and *in every instance*, unless protected by the courts, *they have been compelled to abandon the undertaking.* All parties now engaged in the business are members of the exchange except Greer, Mills & Co., who are making a fight in the courts to maintain their business and are temporarily protected by injunction. It appears from the testimony that any person or partnership *attempting to carry on business independent of the association is invited to apply for membership and if he fails to do so, or is rejected, and attempts to proceed, his name is written on a blackboard kept for public use in the exchange building, and all members are warned against dealing with him.* This admonition is strictly obeyed, and such person is *boycotted.* The outcome is *inevitable.* The *combined opposition* of three hundred men *against one* man can produce but one result. Almost every purchaser or vendor of live stock, *including the great packing houses*, does business through commission merchants, and *nearly the entire volume of live stock received at the yards is consigned to and controlled by these merchants, members of the exchange.* In vain does the outside dealer offer *attractive bargains* for the sale or purchase of stock. *They will have no intercourse with him.* This

state of affairs is known and *circulated among stock growers and shippers*, and they dare not ship their stock to *this boycotted broker or firm*. These facts are established and amplified by *a multitude of witnesses. The object and purpose of the exchange is written across it's face where all can read. It is to control and monopolize the entire business of buying and selling live stock at the Kansas City stock yards.*

But the courts say that a man's business is his property. He must be left free to adopt such calling, profession, or trade as may seem to him most conducive to the full enjoyment of the rights of life, liberty, and pursuit of happiness. The right to choose one's calling is an essential part of that liberty which it is the object of the Government to protect, and a calling when chosen is a man's property and right.

It is the right and privilege of any man to engage in the commission business at the Kansas City stock yards, or, having so engaged in that business, it is his right to continue. A combination whose efforts are directed to prevent him from transacting such business is one which the law will not tolerate.

Barr v. *Essex Trades Council*, 53 N. J. Eq., 101.
Slaughterhouse Cases, 16 Wall., 36–116.
Temperton v. *Russell* (1893) 1 Q. B., 715.

Temperton v. *Russell* (1893) (1 Q. B., 715) is a recent and instructive case. Plaintiff was a mason and builder, carrying on business at Hull. The defendants were members and officers of the Hull branch of certain associations of workmen, namely, The Operative Bricklayers' Society, The Bricklayers' Laborers' Society, and

The Operative Plasterers' Society. Plaintiff complained that the defendants maliciously and wrongfully, and with intent to injure him, procured and induced certain persons who had entered into contracts with the plaintiff to break such contracts, and that the defendants maliciously and wrongfully, and with intent to injure the plaintiff, *intimidated and coerced said persons to break their contracts with the plaintiff, and not to enter into new contracts with the plaintiff.*

The plaintiff was in the habit of supplying building materials to Myers & Temperton, who were master builders, carrying on business at Hull, and who conducted their business in a way that was not in accordance with the rules of the unions. Thereupon a joint committee of the unions passed the following resolution:

> That this committee advises the three societies to abstain from using any lime supplied by merchants who are supplying any builders that are working contrary to joint working rule No. 9. And further, that they refrain from handling or fixing any artificial stonework made by any man who is working contrary to rule 9.

On August 20, 1892, the plaintiff had entered into a contract with one Bretano, a builder, to supply him with certain building materials, viz, the concrete, heads, and sills for fifteen houses. On September 11 Bretano, in accordance with the summons, appeared before the joint committee of the unions, when he was informed by the defendant Russell that the committee would not allow the men belonging to the unions to fix goods supplied by

the plaintiff. On September 12 the committee passed the following resolution:

> That all members of the society refuse to use any material that may have been supplied by any builder who is not conforming to rule 9, and that any member using or handling any material, either lime, bricks, or artificial stone, will be dealt with by the society in accordance with rule 9.

Bretano thereupon refused to perform his contract with the plaintiff. Evidence was also given in regard to similar cases in which the plaintiff had entered into contracts with other persons for the supply of building materials.

Lord Esher, M. R., referred to the action of the defendants in notifying Bretano to discontinue his contract with plaintiff, saying:

> Russell handed the resolution to Bretano and let him know that if he went on dealing with the plaintiff *harm would come to him in his business, because no workman who was a member of the union would touch the material supplied by the plaintiff.*
>
> The object of this was *not to hurt Bretano*, but to *injure the plaintiff in his business*, so as to *force him* to *comply with the union rules*. It is argued that this did not amount to an order to workmen, but was only a piece of advice, a notice, and that they might do as they liked. This is not true. It was an order, an order which the workmen were bound by their undertaking to obey; and they knew that *if they did not obey they would be expelled from the union*. It was an order to those workmen that if Bretano took any goods from the plaintiff *they were to cease working for Bretano*. The intention was *to injure the plaintiff in his business, and so force him to obey the unions.*

The court thereupon reaffirmed its ruling in *Bowen* v. *Hall* (6 Q. B. D., 333), saying:

> We tried to state the rule of law, and we said that though merely to persuade a man to break his contract may not be wrongful in law or in fact, yet "if the persuasion be used *for the indirect purpose of injuring the plaintiff or of benefiting the defendant at the expense of the plaintiff, it is a malicious act which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act if injury ensues from it.*" We think that it can not be doubted that *a malicious act, such as is above described*, is a wrongful act in law and in fact. The act complained of in such a case as *Lumley* v. *Gye* (2 E. N. B., 216), and which is complained of in the present case, is, therefore, because malicious, wrongful. That act is the *persuasion by the defendant of a third person to break a contract existing between such third person and the plaintiff.* It can not be maintained that it is not a natural and probable consequence of that act of persuasion that the third person will break his contract. It is not only the natural and probable consequence, but by the terms of the proposition which involves the success of the persuasion it is the actual consequence. That proposition is quite applicable to this case, where people have been forced, not by obligations, but by means of the conditions under which they carried on their business, to break their contracts.
>
> Is there, as has been argued on behalf of the defendants, a difference between the case of forcing a person to *break an existing contract* and the case of *forcing a person not to enter into a contract?* I can see no difference. Practically it comes to this: You have a contract with A. B., and to-morrow you are going to enter into another contract with him; if you carry out the one *I will destroy your business*,

and if you enter into the other *I will do the same.* In each case there is the same wrongful intent and the same effect of doing injury. I am of opinion that in this case there was evidence on which the jury might find that people were prevented from *making contracts* with the plaintiff by *pressure brought by the defendants*, and that the plaintiff's business had fallen off, and the natural inference for the jury to draw was that the pressure was the cause of the falling off of the plaintiff's business.

Lord Justice Lopes said:

The second question in the case is as to *inducing persons not to enter into new contracts with the plaintiff.* The jury were asked whether the defendants maliciously conspired to induce persons not to enter into contracts with the plaintiff, and whether such persons were thereby induced not to enter into such contracts, and they answered in the affirmative. Does that answer amount to a finding of an actionable wrong? I think that it does. The law appears to me to be that *a combination by two or more persons to induce others not to deal with a particular individual or enter into contracts with him, if it is done with an intent to injure that individual, and if he is thereby injured, is an actionable wrong.*

Lord Justice Smith said:

In my judgment it is perfectly clear law that to induce a person who has made a contract with another to break that contract, *in order to hurt the person with whom it has been made, to hamper him in his trade, or to put undue pressure upon him, or to procure some indirect advantage for the person himself*—to induce another to break a contract for any of these motives—is, in point of law, to do it *maliciously.* * * * In my judgment there is some

evidence in this case, first, that the defendants intended to *coerce* the builders, Myers & Temperton, *to obey their edicts*, and to bring this about they determined to cut off from them the supply of all materials they might require for their trade, and also the supply of men; second, that inasmuch as the plaintiff would not fall in with their commands, the defendants then determined *to cripple and injure him in his trade* by inducing Bretano (together with others who were under contract with the plaintiff) to break the contract which they well knew he had with the plaintiff, so that by this means he might be coerced into obedience.

In my judgment, not only was there good evidence against defendants upon this case of Bretano, but I go further and say that if the jury had found for the defendants upon this they would have been wrong. * * *

As regards the second cause of action, i. e., the count for conspiracy, I agree with what has been said by the other members of the court.

That the coercion or intimidation of persons under contract, or, in other words, *the prevention of the making of contracts*, is equally conspiracy, is further shown in *Vegelahn* v. *Guntner* (44 N. E. Rep., 1077), where the court said:

A question is also presented whether the court should enjoin such interference with persons in the employment of the plaintiff who *are not bound by contract to remain with him*, or with persons who are not under any existing contract, but who are wanting or intending to enter into his employment. A conspiracy to interfere with plaintiff's business by means of threats and intimidations by maintaining a patrol in front of his place in order to prevent

persons from *entering his employment* or in order to prevent persons who are in his employment from continuing, is unlawful, *even though such persons are not under contract to enter into or continue in his employment;* an injunction should not be so limited as to relate only to persons who are bound by existing contracts.

A similar case is *Flood* v. *Jackson* (2 Q. B. D. (1895), 21). There the plaintiffs were shipwrights employed by the day by a firm of ship repairers to execute repairs to the woodwork of a ship. Some iron workers, who were members of a trade union, were employed on the ironwork of the ship, and they objected to working in the same yards with the plaintiffs, upon the ground that the latter had previously worked at ironwork on ships in another yard. The district delegate of the union was called in by the iron workers, and he informed the employers that *the iron workers would leave off work unless the plaintiffs were discharged that day.* In *consequence of that threat* the plaintiffs were *discharged* at the end of the day. The plaintiffs brought an action against the district delegate, the chairman, and general secretary of the union, for maliciously and with intent to injure plaintiffs *inducing the employers to discharge the plaintiffs and to refuse to engage them again.* The jury found that the district delegate had acted maliciously, and that the plaintiffs had been injured thereby, but that the other two defendants did not authorize his acts.

It was held that the action was maintainable against the district delegate, although the discharge of the plaintiffs and the refusal to reengage them involved no breach of contract on the part of the employers.

Lord Esher, M. R., said:

> Now, it is clear that merely to persuade a person who has contracted to break his contract gives no cause of action at all; but if it is done *maliciously*, for the *purpose* of *injuring the person* to whom the advice is given, or for the purpose of injuring someone else, the person against whom the malice is directed and carried out has *a cause of action*, not on the ground of the persuation to break the contract, but on the ground of the malice directed against him. To my mind, the result is the same, *whether the persuasion is to break a contract or not to make a contract*. One person has a perfect right to advise another not to make a particular contract, and that other is at perfect liberty to follow that advice; but if the first person *uses that persuasion with intent to injure the other or to injure the person with whom he is going to make a contract*, then the act is *malicious*, and the malice makes that unlawful which would otherwise be lawful.

Lord Justice Lopes said (p. 40):

> It seems to me, therefore, clear that he (the defendant) went for the purpose of *injuring the plaintiffs*, and that he did injure them, because they were discharged. Was there any lawful excuse, any lawful cause for his so acting? To my mind, none whatever. He might, if he thought fit, have withdrawn the iron workers, or the iron workers might have withdrawn of their own accord from the work. *But what right had he to go to the employers and induce them to discharge the plaintiffs?* It seems to me that if my proposition given above is correct, this case is well brought within it, and there is abundant evidence upon which the jury might find as they did.

In *Lyons* v. *Wilkins* (1 Ch. Div. (1896), 811) the defendants, officers of a trade union, ordered a strike against the plaintiff manufacturers and also against S., a person who made goods for the plaintiffs only; and their pickets, by their direction, watched and visited the works of the plaintiffs and of S., for the purpose of persuading the workmen to abstain from working for the plaintiffs.

It was held that this kind of picketing and the strike against S., for the indirect purpose of injuring the plaintiffs, were illegal acts, and an injunction was granted to restrain the defendants and their agents from watching or visiting the plaintiff's works for the purpose of persuading persons from working for him, and also to restrain the defendants from preventing S. or any other persons from working for the plaintiffs by withdrawing his or other workmen from their employment.

Lord Justice Lindley said (p. 822):

> The consequence of these proceedings is, that the trade unions are, in effect, preventing Messrs. Lyons *from carrying on their business upon such terms as they may choose to arrange with people who come to an agreement with them.* * * * Now, Parliament has not yet conferred upon trades unions the power to *coerce people and to prevent them from working for whomsoever they like upon any terms that they like*; and yet, in the absence of such power, it is obvious that a strike may not be effective and may not answer its purpose. Some strikes are perfectly effective by virtue of the mere strike, and other strikes are not effective unless the next step can be taken and unless other people can be *prevented* from taking the places of the strikers. That is the pinch of the case in trade disputes, and until Parliament confers upon

trades unions the power of saying to the people: "*You shall not work for those who are desirous of employing you upon such terms as you and they may mutually agree upon*," trades unions exceed their power when they try to compel people not to work except upon the terms fixed by the unions. I hardly need say that up to the present moment *no such power as that exists.* * * * Trades unions have now been recognized up to a certain point as organs for good. They are the only means by which workmen can protect themselves from the tyranny on the part of those who employ them; but the moment that trades unions *become tyrants in their turn* they are *engines of evil. They have no right to prevent any man from working upon such terms as he chooses.*

Conceding to the commission man the right to form an exchange, or even a labor union; conceding that they have the right to agree not to trade with nonmembers, how can it be said that they have acquired *the power of preventing nonmembers from doing business.*' When the commission men succeed in *persuading the packing houses not to deal with nonmembers* they go beyond the limit of lawful action, as indicated in the foregoing cases.

If the commission men *alone* constituted the exchange (and the by-laws contemplate that the membership shall include only commission men), and if they had gone to the packing houses and induced them to refrain from dealing with Greer, Mills & Co., with Mr. Harris, or Miss Goodwin, or any of the other unfortunates there, either in completing existing contracts or in making contracts for the future, *can there be any question that the association would then be transcending lawful limits.*'

IX.

THE DEFENDANTS HAVE MONOPOLIZED AND ATTEMPTED TO MONOPOLIZE, AND COMBINED AND CONSPIRED TO MONOPOLIZE, PART OF THE TRADE OR COMMERCE AMONG THE SEVERAL STATES.

In discussing the question of monopoly it is important to recur to the facts as disclosed by the affidavits. It appears that the territory dependent upon the Kansas City market is vast in extent, and that the market, next to Chicago, is the largest in the world. The value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, has recently been judicially investigated (82 Fed. Rep., 850-855) and determined to be between $5,000,000 and $6,000,000. The handling of live stock is obviously very different from other branches of trade and commerce, and requires conditions and surroundings peculiar to itself. Various classes of merchandise may be marketed and sold in many places in the large cities, but the marketing of live stock must necessarily, by its very nature, be confined to particular localities. The marketing of live stock grown in the West must necessarily be done at one of the great stock markets, where stock yards and appropriate appliances are provided. In the nature of things there is little or no competition.

It appears from appellants' brief that exchanges have been organized at all of the stock markets, *with by-laws which fix minimum commissions.* All live stock in the

vast territory tributary to the Kansas City yards must of necessity be marketed there, and in the nature of things it is not possible or practicable that there should be two or more yards which might compete with each other.

The defendants have so combined that this vast traffic is entirely within their control. No live stock can be sold (except theoretically) unless by the aid of and through some commission man. No commission man can make sales unless he is a member of this exchange and abides by its unlawful schedule of commissions. The object of the exchange, says Judge Foster, "*is to control and monopolize the entire business of buying and selling live stock at the Kansas City stock yards.*"

Or, as said in *Greer* v. *Payne* (46 Pac. Rep., 190), it is "*powerful enough to monopolize such services*" as commission men.

A monopoly is thus defined in *Charles River Bridge* v. *Warren Bridge* (11 Peters, 607):

> But what is a monopoly, as understood in law? It is an exclusive right granted to a few of something which was before of common right.

It is not necessary that complete control of the market should be acquired in order to constitute a violation of the act of July 2, 1890. "*All the authorities agree that in order to vitiate a contract or combination it is not essential that its results should be a complete monopoly; it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition.*" *United States* v. *E. C. Knight Co.* (156 U. S., 1, 16.)

Mr. Justice Field, in his concurring opinion in *Union Co.* v. *Crescent Co.* (111 U. S., 746), cited by appellants, says (p. 757):

> The common business and callings of life, the ordinary trades and pursuits which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is the distinguishing privilege of citizens of the United States and the essential element of that freedom which they claim as their birthright. * * *
>
> In this country it has seldom been held, and never in so odious a form as is here claimed, *that an entire trade or business could be taken from citizens and vested in a single corporation. Such legislation has been regarded everywhere else as inconsistent with civil liberty.* That exists only where every individual has the power to pursue his own happiness according to his own views, unrestrained except by equal, just, and impartial laws. * * * It can not be said that a State may limit to a specified number of its people the right to practice law, the right to practice medicine, the right to preach the gospel, the right to teach, or sell, or to pursue particular business or trades, and thus parcel out to different parties the various vocations and callings of life.

If the State of Kansas or the State of Missouri had undertaken to parcel out to the defendant commission men *the exclusive control of their particular vocation*, and had given them the exclusive right to pursue that particular vocation, *how long would such an act stand in a*

court of justice? The statement of the proposition is its own refutation. And yet these defendants claim that they are entitled to the *exclusive right* of doing a commission business at the Kansas City stock yards, and that they have the power to *prevent any other person or corporation from engaging in that business or interfering with them in any respect.* In the case last above referred to Mr. Justice Bradley (with whom concurred Mr. Justice Harlan and Mr. Justice Woods) said (p. 760):

> I hold it to be an incontrovertible proposition of both English and American law *that all mere monopolies are odious and against common right.*

After referring to the case of monopolies (11 Reports, 84 *b.*) and the act of 1821, James I, abolishing monopolies, Mr. Justice Bradley continues:

> They form one of the constitutional landmarks of British liberty, like the Petition of Right, the Habeas Corpus Act, and other great constitutional acts of Parliament. They establish and declare one of the inalienable rights of freemen which our ancestors brought with them to this country. The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase "pursuit of happiness" in the Declaration of Independence, which commenced with the fundamental proposition "All men are created equal," and "that they are endowed by their Creator with certain inalienable rights," and "that among these are life, liberty and the pursuit of happiness." This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, *by investing the latter with a monopoly,* is to invade one of the fundamental privileges of the

citizen, contrary not only to common right, but, as I think, to the express words of the Constitution. It is what no legislature has a right to do, and no contract to that end can be binding on subsequent legislatures. * * *

Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock markets and produce market, and in many other ways. If by legislative enactment they can be carried into the common vocations and callings of life so as to cut off the right of the citizen to choose his vocation, the right to earn his bread by the trade which he has learned; and if there is no constitutional means of putting a check to such enormity, I can only say that it is time the Constitution was still further amended. In my judgment the present Constitution is amply sufficient for the protection of the people if it is fairly interpreted and faithfully enforced.

All agreements which tend to deprive the public of the *services* of parties in the employments and capacities in which they are most useful, are illegal, since they tend to expose the public to the evils of monopoly. (*More* v. *Bennett*, 29 N. E., 88.)

The attempt of a corporation engaged in the refining of sugar to draw to itself the other sugar refineries is held to be a monopoly in *United States* v. *E. C. Knight Co.* (156 U. S., 13). It is said in *United States* v. *Addyston Pipe and Steel Co.* (78 Fed. Rep., 712–723), in speaking of the Knight case:

> The sugar trust was confessedly a monopoly in the common-law sense and in a commodity of prime necessity.

In *Minnesota* v. *Illinois* (94 U. S., 113) there were fourteen warehouses in the city of Chicago which from year to year agreed upon the rates, and through which grain from the Western States had to pass on its journey to the seaboard. The court said (p. 131):

> Thus it is apparent that all the elevating facilities through which these *vast productions of seven or eight great States of the West must pass*, on the way to four of five of the States on the seashore, *may be a virtual monopoly.* * * * This indicates very clearly that during the twenty years in which this peculiar business had been assuming its present immense proportions something had occurred which led the whole body of the people to suppose that remedies, such as are usually employed to prevent business abuses by virtue of *monopolies*, might not be inappropriate here.

If an arrangement among the proprietors of fourteen grain elevators, through which grain passes on its way east, is regarded by the court as a monopoly, may it not be said that it is equally a monopoly where the entire business of handling the vast live-stock traffic that passes to or through Kansas City *is handled by a single body of commission men, with fixed rates of commissions, and who have arrogated to themselves the right to do all of this class of business to the exclusion of every other person.*

It appears from the record (p. 78) that since the organization of the exchange in 1886 there has been received over 1,000,000 cars of stock. At an average rate of $10 per car *the amount paid for commissions exceeds the sum of $10,000,000!*

If the commissions, under the rules, are double what they were before its organization, as the proof shows, and as the lower court found, *it results that the stock raisers have paid unlawful toll and tribute to the exchange in the sum of $5,000,000!*

If the members of the exchange are required to do business on a competitive basis, as other business men do, it means a saving of over $5,000,000 to the stock growers and raisers in the next decade!

The discussion under a former heading of the legality of defendants' organization has necessarily involved a consideration of this feature of the case, so that further discussion seems unnecessary.

X.

EXCHANGES IN GENERAL.

Appellants' counsel have undertaken to prepare a most elaborate article on the various exchanges in existence throughout the world, and profess to have examined and set forth the rules of these various institutions.

We are unable to perceive in what way this discussion pertains to the consideration of the question involved in this case. We might with equal plausibility have written a history of "bucket shops," and it would have been equally relevant. That an exchange properly conducted on legal lines, and in conformity rather than in violation of law, may be beneficial to the community where it exists, as well as to the country at large, may be conceded. The formation of exchanges in the large cities may be admitted to have benefited trade and commerce. The

question here to be considered is the legality or the illegality of the Kansas City Live Stock Exchange.

We are not advised how it is that the court may consider the rules and by-laws of the various exchanges mentioned in appellants' brief, even if it were conceded that they were a pertinent subject of inquiry. They were not pleaded in the court below, much less put in evidence. They are matters of which the court will not take judicial notice, and very properly so, since the legality of the rules of an exchange depends upon many facts and circumstances, and would only be legitimately determined in the light of their operation.

It was said by Mr. Justice Brewer in *Sacchass* v. *Armstrong* (16 Kas., 192), "The general organization of the Methodist Episcopal Church, its administration, and control over the local churches of that denomination, *can not be considered by us, for the facts concerning the same are not in the case made, and they are not matters of which the court can take judicial notice.*"

Speaking of the rules of the board of brokers of San Francisco, the court said (*Goldsmith* v. *Sawyer*, 49 Cal., 209, 212): "The court, however, will not take judicial cognizance of those rules *unless they are those rules and usages of trade and commerce which would be recognized without their adoption by any particular board or association, and the party who relies upon them must plead them.*"

The courts will not take judicial notice of private incorporation acts (*Danville Plank Road Co.* v. *State*, 16 Ind., 456; *Perry* v. *Railroad Co.*, 55 Ala., 413; *Maudere* v. *Bonsignore*, 28 La., 415), nor of the existence of

ferries established by county commissioners (*State* v. *Wise*, 7 Ind.); rules, usages, and customs of mining districts (*Sullivan* v. *Hense*, 2 Colo., 429); local customs concerning rights of way (*Lewis* v. *McClure*, 8 Oreg., 273); by-laws of a corporation (*Benevolent Society* v. *Phillips*, 36 Mich., 22); rates of exchange between different parts of the country (*Lowe* v. *Bliss*, 76 Am. Decisions, 742); local customs and history (*Turner* v. *Fish*, 28 Miss., 306, 311); rules of religious denominations (*Young* v. *Ransom*, 31 Barber, 49). The local history of a county will not be considered on appeal unless proved before the jury. (*McKinnon* v. *Bliss*, 21 N. Y., 206, 214.)

In speaking of the court's power to notice things judicially this court said, in *Brown* v. *Piper* (91 U. S., 37): "This power is to be exercised by the courts with caution. Care must be taken that the requisite notoriety exists. *Every reasonable doubt upon the subject should be resolved promptly in the negative.*

> *Steamship Co.* v. *Ins. Co.*, 129 U. S., 397, 444, 464.
> *Engraving Co.* v. *Hoke*, 30 Fed. Rep., 444.

The local rules and regulations of miners, although recognized by the statute, will not be noticed judicially unless they are produced and admitted in evidence.

> *Meydenbauer* v. *Stevens*, 79 Fed. Rep., 787, 791.
> Phillips on Evidence, vol. 1, p. 625 (4th Am. Ed.).

But if the private rules and by-laws of the various exchanges throughout this country and Europe are to be noticed judicially, the fact remains that *they are beneficial or injurious, legal or illegal, depending upon the character of the particular organization and the method by*

which it is managed and operated. Properly organized and operated, they are beneficial to commerce and to the community. They may be, however, and frequently are, injurious to the best interests of the country, and this is well known to the text writers on political economy and economics as well as to courts.

In his work on economics (chap. 4), Mr. Arthur T. Hadley, professor of political economy in Yale University, an eminent author and one who needs no introduction to this court, says, in speaking of the speculative tendency at the present day:

> The sales of certain staples, such as wheat, cotton, or petroleum, in the New York markets are, in some years, *fifty times as great as the actual deliveries.* Of the transactions in stocks perhaps *an equally small proportion represents purchases for investments.* A large part of such sales and purchases are made *on margins*, the buyer not paying or intending to pay the full amount. * * * The narrower the margin, the greater is the chance of gain or loss in proportion to the capital invested, and the higher are the stakes to the *gambler* on either side.
>
> Here as elsewhere high stakes constitute a temptation to unfair play. If the outside public, as frequently happens, has bought securities in the ill-grounded hope of a rise in price, the professional operators will speculate for a fall, and try to insure its advent by spreading false reports of every kind. If, on the other hand, a large number of operators have made contracts to deliver securities or produce which they do not possess, a few men with large capital will often try to lock up the whole supply of such commodities and compel those who have made

> the contracts to purchase the means of filling them at an exorbitant figure. Such an operation is known as a "corner," and its success is made possible by the number of speculative contracts which must be filled within a limited period of time. The man who thus attempts to manipulate the markets, lowering prices by false reports or raising them by fictitious scarcity, is doing the same kind of business as the man who "pulls" horses or "stacks cards." In fact, he is doing worse; for the men who suffer from false running or card sharping are those who voluntarily go into the business of betting, while the knavish speculator may hurt, to some degree, not only other speculators, but also the producers and consumers. * * * The direct harm done to producers and consumers is very likely much less than is generally supposed; * * * but the indirect harm to business methods and business morals is incalculable. * * * If business men can not be controlled by commercial ethics—ethics fitting the conditions of to-day rather than those of five centuries ago—*they must expect to be controlled by something else.* * * * If they will not accept the full measure of their responsibility which goes with their industrial power, they must expect to be *deprived of responsibility and power together by a popular movement in the direction of socialism.* Such a movement is being aided and countenanced by every financier whose interests in the stock market lead him to forget the interests of his properties, by every lawyer who teaches his clients to evade the responsibilities of wealth.

This court recognized the evils which grew up and manifested themselves in the stock markets and produce markets in *Butchers' Union Co.* v. *Crescent City Co.* (111

U. S., 746), where Mr. Justice Bradley, with whom concurred Mr. Justice Harlan and Mr. Justice Woods, said:

> Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the *stock market* and *produce market*, and in many other ways.

This court, in *Armstrong* v. *Bank* (103 U. S., 433), had occasion to consider and vigorously condemn an attempted "corner" in wheat, manipulated on the Chicago Board of Trade, which played an important part in the wrecking of the Fidelity Bank.

Professor Jevons, in his Theory of Political Economy, page 92, in speaking of the ideal exchange, in which it is to be observed illegal features are conspicuously absent, says:

> The theoretical conception of a perfect market is more or less carried out in practice. It is the work of brokers in any extensive market to organize exchanges, so that every purchase shall be made with the most thorough acquaintance with the conditions of trade. Each broker is in communication with as many other traders as possible in order to have the widest range of information and the greatest chance of making considerable exchanges. It is only thus that a definite market price can be ascertained at every moment. * * * By the mediation of a body of brokers, a complete consensus is established, and the stock of every seller or demand of every buyer brought into the market.

In an interesting article in Harper's Magazine, vol. 71, p. 829, Mr. R. Wheatley describes the workings of

the New York Stock Exchange, giving also a sketch of its origin and purposes. The writer says:

> The ideal business of the New York Stock Exchange is unquestionably as legitimate as that of the Produce Exchange or any intermediary between the seller and the buyer. *That there are grave evils incident to its operation is equally unquestionable.* * * * *While the Stock Exchange has legitimate and invaluable uses, it is none the less true that it has been converted into a gambling arena by the great speculative operatives.* * * *

Again the writer says:

> Failures in business are not so common with brokers as with their clients. One of the more prominent is credited with the assertion that "*If there were no fools most of the members of the Stock Exchange would have to retire from business.*" * * *
>
> For the year ending December 31, 1881, the transactions of the Stock Exchange are computed to have amounted to $12,816,246,600. Checks for this enormous amount were drawn and paid. The commissions thereon at one-fourth of 1 per cent would be $32,040,616, which divided equally among the eleven hundred brokers would give each the snug little sum of $29,127. This as related to the cost of a seat is almost if not quite equal to the Israelite's "shent per shent." * * * It is impossible without possession of an abstract of each broker's business to accurately estimate the amount of *fictitious sales on margins as compared to sales to bona fide investors. It can not be judged to be less, and is probably more than one-half of the whole.*

In the Fortnightly Review, vol. 40, p. 758, in an article on finance, it is said, speaking of the tendencies of the Stock Exchange to induce gambling and conse-

quent defalcation, "*To men cursed with the passion for gambling, the Stock Exchange affords facilities that Homburg or Monaco never approached.*"

Our only purpose in going into this branch of the case is to demonstrate that there is no magic in the name "exchange" which exempts members from the results of a violation of the law. Illegal transactions are as promptly condemned when incorporated into the purpose of an exchange as elsewhere.

In the very recent case decided by the House of Lords, *The Universal Stock Exchange Limited* v. *David Strachan* ((1896) App. Cas., 166), the court had occasion to condemn in unmeasured terms a stock exchange which, although skillfully organized, and although in its articles gaming and wagering were expressly prohibited, was nevertheless held to be illegal.

Lord Halsbury, L. C., said that, notwithstanding the ostensible purpose of the exchange, "the whole transaction has to be looked after, and the whole nature of this institution, whatever it is. *Speaking now upon the evidence before us, it appears to me as if it were a concern expressly designed for the purpose of enabling people to gamble in such a way as to evade the provisions of the law.* * * * *When I look at the terms themselves, the whole scheme appears to me to be intended with great ingenuity to pretend that there is a real transaction, and yet there is to be a payment in respect of relations between the parties, which is only reconcilable in my mind with its being an unreal transaction.*"

Lord Herschell said, "I think the character of the documents themselves, coupled with the nature of the transactions entered into, the position of the parties who

entered into them, and other circumstances I need not detail, *raise a question for the jury whether these were real transactions of commerce, or whether they were a mere gambling for the differences.*"

In *McGrew* v. *City Produce Exchange* (85 Tenn., 572), the court said:

> The bill alleged and the proof showed that these defendants combined and federated together, styling themselves, when chartered, as "The City Produce Exchange," for the purpose of engaging in the business of buying and selling futures in corn, cotton, wheat, etc., ostensibly, while *in reality it was a pretense;* the real business intended to be done and in fact done being the *pretended purchase or sale for future delivery of these products under contracts in legal and valid form when in fact illegal and invalid because of the nonexistence of any real intention to buy and sell for such delivery; and so executed and framed to cover and conceal the real purpose of the parties, which was to gamble and wager on the rise and fall of prices of articles pretended to be bought or sold.* * * * *The facts justify the finding that the incorporation was but a cloak used to cover the illegal acts contemplated in the organization and done as a business.*

Beadles v. *McElrath* (3 S. W., 152) was a case in which certain transactions on the New Orleans Cotton Exchange are declared wagering contracts in spite of the rule of the exchange that actual delivery of the cotton might be exacted. The court said:

> The testimony of appellants leave us in doubt on this subject, and neither the rules of the Cotton Exchange nor the letter of the contract will be allowed to give validity to such agreements. We

are aware that the business of the Cotton Exchange *involves the greater part of the trade of the country's greatest staple, and that leading merchants and business men engage in such transactions; but this in no manner relieves the case from the vicious features of this class of contracts. They are nevertheless pirates upon the legitimate trade and consumers of the country.*

A great number and variety of transactions on exchanges have been held to be illegal by courts, a few only of which will be mentioned.

Merchants' Exchange of St. Louis.

Crawford v. *Spencer*, 92 Mo., 499.
Connor v. *Black*, 119 Mo., 126.

Milk Exchange.

People v. *Milk Exchange*, 27 L. R. A., 437.

The Lockport Coal Exchange.

People v. *Sheldon*, 23 L. R. A., 221.

The Nashville Coal Exchange.

United States v. *Jellico Coal Co.*, 12 L. R. A., 753.

New York Stock Exchange.

Pratt v. *Boody*, 35 A., 1113.

City Produce Exchange.

McGrew v. *City Produce Ex.*, 4 S. W., 38.

Chicago Board of Trade.

Melchert v. *Am. Tel. Co.*, 11 Fed., 193.
Beveridge v. *Hewitt*, 8 Ill. Ap., 467.
Watt v. *Costello*, 40 Ill. Ap., 307.
Pierce v. *Foote*, 113 Ill., 228.
Cothran v. *Ellis*, 125 Ill., 496.
Stock Exchange v. *Mellen*, 27 Ill. Ap., 556.
McCormick v. *Nichols*, 19 Ill. Ap., 334.

Lyon v. *Culbertson*, 83 Ill., 33.
Warren v. *Scanlon*, 59 Ill. Ap., 138.

San Francisco Stock and Exchange Board of Brokers.

Cushman v. *Root*, 89 Cal., 273.

Cotton Exchange of New Orleans.

Beadles v. *McElrath*, 3 S. W., 152.

New York Cotton Exchange.

Fortenbury v. *State*, 47 Ark., 188.

Corn Exchange.

Gregory v. *Wendell*, 40 Mich., 432.

Milwaukee Chamber of Commerce.

Barnard v. *Backhouse*, 52 Wis., 593.

Kansas City Live Stock Exchange.

Greer v. *Payne*, 4 Ks. Ap., 153.
United States v. *Hopkins*, 82 Fed., 533.

Chicago Live Stock Exchange.

People v. *Chicago Live Stock Exchange*, 48 N. E., 1062.

Corn and Flour Exchange, Baltimore.

Irwin v. *Williar*, 110 U. S., 499.

Without in any way attempting to belittle the advantages of an exchange lawfully organized and lawfully conducted, we submit that there are evils connected with it which in a proper case courts will not hesitate to correct. The remarks of the lower court in this respect were perfectly justified by the existing conditions. The court said (82 Fed. Rep., 536):

> I may be permitted to say, however, that the methods and aims of many of these exchanges

and boards of trade are *not altogether beneficial* to the business and commerce of the country. That they are beneficial to the *members* and perhaps to the *locality* may be admitted. It may also be admitted that a properly conducted agency or medium through which the vendor and vendee may readily sell and buy everything that enters into commerce or trade is demanded by the business interests of the whole country; but this agency should not be permitted to tamper with or in any way *impede or restrain the natural flow of the stream of industry or commerce*. The crying complaint to-day, and the *great menace* to the welfare of the people, is *the tendency of wealth to monopolize and control by trusts and combinations the products and industries of the country;* and it must be confessed by every thoughtful observer that the many so-called stock and produce exchanges *are among the most potent instruments for the accomplishment of these purposes by speculators and adventurers, men who, adding nothing to the productive wealth of the country, grow rich or poor by gambling on the wealth produced by others.* Men are daily selling to these exchanges millions of bushels of corn, wheat, and other produce, who neither have nor expect to have a bushel, and others are buying millions of bushels who never expect to receive a bushel. Both sides are tampering with the *normal prices fixed by the law of supply and demand*, and attempting by dishonest means and methods to serve their ends. The courts have uniformly condemned this class of business as illegal, and though it is under the ban of the law, it still flourishes. The remedy must be looked for in legislation and not in the courts alone.

XI.

APPELLANTS' AUTHORITIES ON THE SUBJECT OF EXCHANGES.

With commendable industry the appellants have collected a vast number of cases relating to exchanges of various kinds. As above stated, we are unable to perceive the relevancy of this inquiry in determining the question of the illegality of the exchange in question, which is to be tested by the act of July 2, 1890.

Much time and space are devoted to a discussion of the London Stock Exchange (in which gambling and wagering contracts are prohibited), but inasmuch as the rate of commissions is regulated by statute (Bisbee & Simonds, Law of Produce Exchange, sec. 105; Dos Passos on Stock Brokers and Stock Exchanges, p. 245), we are somewhat at a loss to perceive how any light is thrown on the subject under discussion.

Attention is also called to the Paris Bourse, which is said to have been organized in 1324, having its membership limited to sixty; but as the act of July 2, 1890, is not operative in France, and as it, according to Dos Passos, page 327, is maintained under the supervision of the Government, and the members are Government officers, the analogy between it and the case under consideration is not apparent.

At the beginning of the discussion, page 89 of their brief, appellants' counsel "propose to show that provisions fixing minimum commissions, etc., have been conspicuous features of every trading exchange in the world." They also declare "that these exchanges all bear the same

characteristics which are here denounced as evidencing a purpose to restrain trade, and to monopolize a given branch of trade."

It is a significant fact, however, that no features "which are here denounced as evidencing a purpose to restrain trade and to monopolize a given branch of trade" have been the subject of consideration in any of the numerous cases cited. No case cited holds that an association, whether organized as an exchange or not, has the power to limit the right of members *in transmission of interstate telegraph messages*. No case cited holds that an association has the right *to limit its members in respect to the number of solicitors that may be employed in soliciting shipments*. No case cited holds that members of an exchange or other association *may agree upon an artificial schedule of commissions in connection with rules which exclude from the market nonmembers*, when they desire to compete in the market with them. No case is cited which holds that two classes of persons, naturally antagonistic, for example, the buyer and seller, or purchaser and consumer, *may combine to control the entire business of a commodity at any great market*.

We desire to briefly review the authorities relied upon by the appellants, with a view of aiding the court in determining the exact questions passed upon. In appellants' brief, in many instances, *fragments of quotations are torn from the text and grafted on the statements of counsel so as to apparently make a strong and forcible statement of the law in support of their position; but we think, with all due respect, that such statements are in many instances misleading*. Thus, from the statement made (p. 90) in

reference to *McQuillon* v. *Real Estate Exchange* (15 N. Y. Supplement, 206–207), it might be inferred that it had been judicially determined that *such rules as are here in controversy* "were not only reasonable but essential to the preservation of the exchange and the protection of its members;" but, in fact, the only question decided in that case was that a "stand" in the auction room of the Real Estate Exchange and Auction Room, Limited, of New York, *is not assignable;* that it can not be sold or assigned by a member of the exchange who had sold his stock even to another member; that it is a *personal right of a strictly personal character.* The validity of the rules which are under discussion in this case are nowhere there discussed.

In *Jones* v. *Clifford* (5 Fla., 510) three pilots were duly appointed at a certain point by the port wardens. No one but the official pilots could act. Two of the three port wardens advised an association of these three pilots, by which they took turns in watching, and divided the proceeds of their labors, ratably. The act providing for the appointment of pilots prohibited persons from acting who were not appointed, under a penalty, and left the regulation of them and the establishment of all such ordinances as they should deem advisable to the board of port wardens for the harbor. The court held that under the circumstances, the agreement among the pilots was not void.

It is apparent that in this case *there was no room for competition*, since none could act except the regular appointees. They formed a partnership under authority of

the port wardens. The case presents no features of a monopoly.

It is next urged (p. 92) that exchanges have been officially recognized in the annual reports of the Interstate Commerce Commission, etc. Inasmuch as they were known to Congress prior to the passage of the antitrust act, it is argued that Congress could not have intended to make them unlawful conspiracies.

The same argument was made in the Trans-Missouri Case. It was pointed out that the Interstate Commerce Commission, in its first annual report (1887, p. 33), not only referred to the various traffic and freight associations, but they were discussed and even commended. The same is also true of the second annual report (1888, p. 41), and of the third annual report (1889, p. 48); and this fact is commented upon by Mr. Justice White in the dissenting opinion; but that, notwithstanding the fact that freight associations were known to Congress and favorably reported to it by the Interstate Commerce Commission, it was held that they were within the terms of the antitrust act.

It is urged (p. 98) that "exchanges do not constitute combinations or conspiracies in restraint of trade. On the contrary, they promote and facilitate it."

In *Munn* v. *Illinois* (94 U. S., 113, 132), it appeared that the elevator business, as carried on in Chicago, had *promoted* and *facilitated* the grain business until it had assumed "immense proportions." But notwithstanding, the court said they were "virtual monopolies," and that the cause of the public was best served by placing restrictions upon them.

In promoting and facilitating trade, care must be taken *that lawful limits are not overstepped.* It might be conceived that trade would be promoted and facilitated in certain lines by an organization which should provide for the assassination of its rivals; and yet it would scarcely be possible for even an exchange to engage in such practices without making its members amenable to the criminal laws. So that the test of legality is not in itself the promotion of trade, but rather *the promotion of trade by lawful means.*

In support of this proposition, counsel cited *Cahlicott* v. *Griffiths* (8 Ex., 898), where it is held that the plaintiff, who was a printer, might recover from a society of which he was a member the reasonable value of a printing bill done by him at the request of the society, notwithstanding his membership.

Pollock, C. B., said:

> On referring to the society's rules, upon which the question turns, it appears to us that the circumstance of the plaintiff being a subscriber or member of the society does not in any way preclude him from maintaining an action against the members of the committee who personally ordered the work which was done for them. These rules do not constitute a partnership among the members or subscribers, and therefore they do not on that ground take away from the contributor his right of action against the members of the committee.

This was the only question decided.

Belton v. *Hatch* (109 N. Y., 593) is also cited in support of this same proposition. It appears that one

Des Marets, a member of the New York Stock Exchange, was expelled because insolvent, it appearing that his failure was caused by doing business in a reckless and unbusinesslike manner. His membership was accordingly sold by the exchange, and his assignee brought suit for the proceeds of such sale. It was held that the rule of the exchange, which provided that in such cases the proceeds of the sale of the membership should be disposed of by the committee on admissions, was reasonable, and did not contravene any rule of public policy.

The court said:

> In the case of a member who by misconduct, cognizable by the laws of the association, forfeits his right to continue to remain a member, there is reserved by the constitution the right to dispose of his membership. *These rules* are reasonable, and do not contravene any rule of public policy, and having been consented to by the plaintiff's assignor, deprive him of any interest or rights in the association of which he had ceased to be a member.

In reference to the cases cited (p. 99 et seq.), under the heading

"ASSOCIATIONS TO REGULATE THE MANNER OF CONDUCTING TRADE,"

it is important to note that "they were made under a condition of things and a state of society different from those which now prevail." (*Gibbs* v. *Consolidated Gas Co.*, 130 U. S., 396.)

In *Pierce* v. *Bartram* (1 Cowp., 269), an action was brought by the chamberlain of the city of Exeter against

the defendant for slaughtering two oxen within the city of Exeter contrary to a by-law made by the mayor and common council of the city of Exeter under a general power given them by charter, anno. 3 Eliz., to make by-laws. The by-law prohibited any butcher or other person slaughtering any animals within the limits of the city, and fixed a penalty of 20 shillings for every beast so slaughtered.

Lord Mansfield said:

> This is a very clear case. The by-law in question is not a restraint of trade, but only a regulation of it in this particular city, and it is made in confirmation of the act of Parliament which has been mentioned.

Cope v. *Rowland* (2 M. & W., 149) merely holds that a broker can not maintain an action for work and labor and commission for buying and selling stock, etc., *unless duly licensed* by the mayor and aldermen of the city of London, pursuant to 6 Anne, c. 16.

In *Green* v. *Weaver* (1 Sim., 404) the question was decided that—

> A broker in the city of London must answer a bill of discovery in aid of an action brought against him by his employer for misconduct, although the discovery will subject him to the penalty of a bond given by him to the corporation on his admission.

In *Scott* v. *Cousins* (L. R., 4 C. P., 177) it appears that by statute it was provided that anyone acting as broker within the city of London without license should be subject to a penalty of £100. A. having acted as a broker without license was held liable to the penalty.

In *Smith* v. *Lindo* (4 C. B. N. S., 395) it is held that a dealer in shares who acts as a broker without license is not thereby prevented from recovering remuneration for his services.

In *Robinson* v. *Kitchen* (21 Beav., 365) it is held that a man who holds himself out to the world as a sworn broker thereby impliedly asserts that he has taken the steps necessary to qualify himself to act as such, and he will be bound to give discovery to the parties employing him as a broker, respecting his dealings and transactions as such, though he may thereby subject himself to pecuniary penalties payable to the city of London for acting as a broker without payment of the fees imposed by 57 George 3, c. 9.

Under the heading (p. 102),

"REASONS FOR ESTABLISHING EXCHANGES,"

a number of authorities are cited.

It seems that the reasons are wholly immaterial in this case. They exist because there is *a necessity for a market.*

> The market rises to its highest efficiency and value when it concentrates into one focus so large a portion of the buyers and sellers of a certain commodity as to become, in conjunction with one or two other markets of the same kind, an authoritative standard of prices of the articles in which it deals for all buyers and sellers throughout the world. (Principles of Economic Philosophy, by Van Buren Denslow, p. 100.)

The cases cited, however, throw little or no light upon the subject under discussion.

Tompkins v. *Saffery* (L. R., 3 App. Cas., 213) is frequently cited in support of various propositions. It holds in substance that the rules of the London Stock Exchange are binding on its *members*, but not binding on *nonmembers*. A member became bankrupt, and his estate was disposed of by members of the exchange in accordance with their rules. His outside creditors objected and sued. They were allowed to recover from the Stock Exchange all of his assets for distribution among his general creditors.

The court said, in speaking of the rules in this respect (which was the only question under consideration):

> Therefore, although everything done in the domestic forum of the Stock Exchange under those rules may be done according to the rules, and may be most wholesome in its operation for the members of the Stock Exchange, still what is done must be subject to the rights *of those who are not amenable to the jurisdiction of the Stock Exchange; and when those higher rights come in conflict with these rules, of course these rules must give way to those higher rights.*

This is a very fair statement of the rule, and from a very learned court. The rule announced is not a new one. It merely says, in effect, that the rules of the stock exchange, or any exchange, or any voluntary association, are binding upon those who are members thereof, and who have agreed to be bound by such rules, *but that they can have no effect upon nonmembers. They can not override the law of the land.* As justly said, when the law of the land "comes in conflict with these rules, of course

these rules must give way to those higher rights." And so when the law of the land prohibits monopolies or conspiracies or contracts in restraint of trade, *the rules of an exchange or association can override it.*

Walls v. *Bailey* (49 N. Y., 464) was an action instituted to recover a balance alleged to be due to the plaintiffs for plastering the defendant's house.

It was held "that parties are presumed to contract in reference to a uniform, continuous, and well-settled usage pertaining to the matters as to which they enter into agreement, where such usage is not in opposition to well-settled principles of law and is not unreasonable."

No question of exchanges or the validity of their rules came under consideration.

In *Nickalls* v. *Merry* (L. R., 7; H. L., 530), it was decided that—

> A purchase or sale of shares made by one who is not a member of the stock exchange, and made through a broker who is a member of that body, will be treated as made subject to the rules of the stock exchange. The rules of the stock exchange imply that the name of the person given as that of the ultimate purchaser of shares must be that of one able and willing to purchase, and they are not satisfied if the name given is that of a nonexistent person, a lunatic, an infant, a married woman, or a person who has not given authority for the use of his name.

The rules of the exchange in this respect, and no other, were under consideration, and even then only as between persons members of the exchange or equivalent thereto, and they were held to be bound by them.

Speight v. *Gaunt* (L. R., 9 App. Cas., 1) is also cited under this heading. It was an action against the trustee to recover trust funds alleged to have been misapplied. The trustee employed a broker to buy securities. The broker gave the trustee a bought note which purported to be subject to the rules of the London Stock Exchange, and obtained the purchase money from the trustee upon the representation that it was payable the next day, which was the next account day of the London exchange. The broker never procured the securities but appropriated the money to his own use and eventually became insolvent. It was held by the court that the trustee was not responsible if he followed the usual and regular course of business adopted by ordinary, prudent men in making such investments.

In *Dillaway* v. *Alden* (88 Me., 230), it was held:

> *These devices* of the brokers to facilitate their transactions may bear to the superficial observer the appearance of jugglery rather than of regular buying, selling, and delivery; but a deeper and longer look will discover that they are appropriate means for the quick and economic transaction of large volumes of legitimate business.

Under the heading (p. 111),

"LEGAL STATUS OF TRADE USAGES,"

it is asserted that the rules of an exchange constitute "a codification of trade usages, and that it is recognized in many cases."

This may be true, but it is also a significant fact that in the codification of *trade usages* it has never been supposed or understood *that an exchange has the right to pass*

such by-laws as are challenged as illegal in this case. This will appear from an examination of the cases cited under this heading.

Goodwin v. *Roberts* (L. R., 10 Ex., 337) holds that—

> Scrip issued in England by the agent of a foreign Government, by which the holder is entitled, on payment in full of the installment due from him, to delivery by the agent of definitive bonds of the foreign Government on their arrival in this country, which by the usage of bankers and dealers in public securities, is transferred by delivery, passes by such delivery to a *bona fide* holder for value without title.

In other words, the usages of bankers and dealers in buying securities when known and universally recognized, constitute a part of a contract made where such custom obtains. This is, of course, familiar law.

To the same effect is *Renner* v. *Directors, etc.* (9 Wheat., 581), where it is held that—

> By the custom of the banks in the District of Columbia, payment of a promissory note is to be demanded on the fourth day after the time limited for the payment thereof, in order to charge the indorser, contrary to the general law merchant, which requires a demand on the third day. Evidence of such local custom is admissible in order to ascertain the understanding of the parties with respect to their contracts made in reference to it.

So, in *Ousequa* v. *Willings* (1 Pet. C. C., 225), it is held that—

> When a usage is so proved as to leave no doubt of its existence, it becomes a part of the law, and the court will decide on it as such without requiring it to be again proved.

To the same effect is *Brandao* v. *Barnett* (12 Cl. and Fin., 786), which was an action for converting exchequer bills. It was there decided that—

> A general lien of bankers is part of the law merchant, and is to be judicially noticed like the negotiability of bills of exchange.

In *In re Cutford* (15 Rep., 3) it is said:

> Warehousemen in the city of Bristol have, by the custom of the city, a general lien over all goods warehoused with them—other than goods in respect to which warrants have been issued—for all warehouse rent, laborage, haulage, and any other charges incurred or becoming payable in connection with such goods, or with any other goods warehoused by the same individual, either before or after.

In *Leach* v. *Beardsley* (22 Conn., 404) it is held that—

> In the absence of clear stipulations in contracts, usage of trade or business is often proved to show the actual intent and purpose of the parties; and a general usage affecting any branch of business furnishes good evidence of what is required as right and reasonable in that respect; so that negligence or misconduct can not be imputed to a party who conforms to such usage.

In *McMasters* v. *Pennsylvania R. R. Co.* (69 Pa. St., 374) it is said:

> A custom so long persisted in as to be known and practiced by a community is the law of the particular business in which it exists, and the presumption arises that it is in the view of parties who contract about this subject-matter.
>
> To establish such custom it should be reasonable, continued, and acquiesced in by all coming within its operations.

In *Baxter* v. *Rodman* (3 Pick., 435) it was held that a reasonable usage was binding on the owners of ships engaged in the whaling business in cases where the masters are not prohibited from making such contracts.

In *Kershaw* v. *Wright* (115 Mass., 361) it is said:

> On the issue whether a usage exists in a city to inspect a certain kind of provisions, evidence that the rules of a chamber of commerce having the power, given to it by the acts of incorporation, to appoint an inspector of provisions, and one of the purposes of which was declared to be "to establish and maintain uniformity in the usages of the city," said nothing about the kind of provision in question, while they provided for the inspection of many other kinds, is admissible to show the nonexistence of the alleged usage.

In *Excringham* v. *Lord* (19 Ill. App., 565) it is held that—

> No usage or custom can be set up in contravention of the express terms of a contract, but a usage or custom may add new terms not expressed in or covered by the contract which are not incidental and not repugnant to it.

It is not perceived how these authorities may aid the court in the determination of the questions here involved. What they decide may be all summed up as follows: Custom can not override the express terms of a contract, but when a contract is made in a locality where there exists a custom which is universal, uniform, and notorious the parties are presumed to have contracted with reference to such custom; and so far as it is applicable, it may be regarded as incorporated within the body of

the contract. When a custom or usage becomes universal it may, in time, come to have the force of law. How this may aid the court in the determination of the question at issue is not apparent.

But the custom of usage which is thus incorporated into a contract must be a *lawful one*, and one resulting from the natural conduct of business *without artificial means*. Thus it is held in *Lovejoy* v. *Mitchell* (88 Mich., 15) *that the prices fixed by an association are not entitled to be proven as evidence of value*.

On page 114 numerous cases are cited under the heading,

"RULES FOR THE ORDERLY CONDUCT OF BUSINESS REGULATING COMPENSATION FOR SERVICES RENDERED."

It might be reasonably expected that somewhere among the forty-five citations under this heading the attention of the court will be directed to some *judicial determination that exchanges, or some similar organization, have the right to agree upon a minimum schedule of prices and charges*.

Let us make an examination, and ascertain if our expectation will be verified.

In *Perkins* v. *Lyman* (9 Mass., 521) it is held that—

> Where one, for a valuable consideration, covenanted that he would not be directly or indirectly interested in any voyage to the northwest coast of America, or in any traffic with the natives of that coast for seven years, it was holden that such contract was not void as against the policy of the law, being in restraint of trade; and that it was a breach

of the covenants for the covenantor to own and fit a vessel for such voyage, although before her departure he divested himself of all interest in the vessel and cargo.

In *Leslie* v. *Lorillard* (110 N. Y., 519) there was an agreement to restrain *competition*, but it was held to be valid on the ground that the restraint was not *unreasonable*.

In *Grissell* v. *Bristowe* (L. R., 4 C. P., 361) it appeared that the usage of the stock exchange was that, in transactions between members of it, there is an implied understanding that, on the purchase of stock or shares, the buying jobber shall be at liberty by a common day, called the "name" day, to substitute any other person as buyer, and so relieve himself from further liability on the contract, provided such substituted person be one to whom the original seller can not reasonably except, and that such person accept a transfer of the stock or shares and pay to the original seller the price. It was held that this usage, being founded on the general convenience of all persons engaged in a particular business, can not, as regards such person, be said to be unreasonable. This rule and no other was under consideration.

In *Duncan* v. *Hill* (L. R., 6 Ex., 259) there is reported the following case:

> The plaintiffs, brokers on the London Stock Exchange, were instructed by the defendant, who was not a member of the house, to buy certain shares in various public undertakings for him for the account of the 15th of July, 1870. Subsequently he told the plaintiffs to carry over the shares to the account

of the 29th of July. This was done, and the defendant was furnished with an account showing him to be liable to a difference of £1,688 19s. On the 18th of July the plaintiffs were declared defaulters, and, in accordance with the rules of the stock exchange, all their transactions were closed and accounts made up at the prices current on that day, without the knowledge of or any reference to the defendant. The result was that there was a difference against the defendant of £6,013 13s. 5d. In an action to recover this sum—

Held, that the rules of the stock exchange, regulating the mode of dealing with defaulters, bound the defendant; that the plaintiffs, though themselves the defaulters, might take advantage of those rules, and that therefore they were entitled to recover.

The question there considered and determined was whether, upon contracts made upon the stock exchange between its members and according to its rules and usages, it would be reasonable that the principal should be identified with the agent or broker and bound and liable as the agent himself is to the performance of the contract made in all its incidents and with all its consequences.

In *Cordell* v. *Hall* (34 Fed. Rep., 866) and in *Hall* v. *Cordell* (142 U. S., 116) the sole question was in reference to a verbal agreement made in Missouri to accept and pay on presentation at the place of business of the promisor in Illinois all drafts drawn upon him by the promisee for live stock to be consigned by the promisee from Missouri to the promisor in Illinois; and it was held that this was to be determined by the law of Illinois and not by the law of Missouri. There was no question raised or discussed or decided in reference to the

matter of commissions. The word is mentioned once, incidentally, in the same manner that Chicago is mentioned. One is as important as the other. It can be no more said that the court gave its sanction to the commissions in that case, although it is not disclosed whether they were fixed by a rule of the exchange or otherwise, than that it gave its sanction to the politics or morals of the city of Chicago.

In *Rorke* v. *San Francisco Stock and Exchange Board* (99 Cal. 196) the sole question involved was the constitution and by-laws, by which it was provided that any member failing to meet his engagements in the board should be suspended until he had settled with his creditors. It was held that—

> Where a member has been suspended from his seat or membership in the board and his right thereto sold to satisfy a lien thereon for debts contracted by him as a member, his membership therein ceased and all his rights pertaining thereto were extinguished, and mandamus will not lie to compel his restoration to membership.

In *Bangs* v. *Hatwick* (30 Fed. Rep., 97) the controversy was over a promissory note, alleged to have been given for a gambling debt in speculating in stocks, apparently on the Chicago Board of Trade. No other question was considered or passed upon.

In *Gilbert* v. *Gangar* (8 Biss., 214) the question again arose as to the validity of transactions on the board of trade, and the defense was that the transaction was void as a gambling debt. Plaintiff was permitted to recover for the difference paid by him in behalf of defendant, as

well as for all his commissions; but whether the commissions were fixed by the board of trade or whether they were determined by contract or by expert testimony is nowhere disclosed. No question was raised in reference to them.

In *Irwin* v. *Williar* (110 U. S., 499) the question of the legality of certain transactions on the Corn and Flower Exchange of Baltimore was under consideration. It was held, following *Robinson* v. *Mollett* (L. R., 7 H. L., 802), that the custom of the board of trade in the matter of the settlement of differences was not binding upon a member without his assent. No question of the legality or validity of commissions was considered or decided.

Roundtree v. *Smith* (108 U. S., 269) is another case where a Chicago Board of Trade transaction was assailed as a gambling contract. The suit was to recover the reasonable worth of services in the purchase of pork, etc., and making sales thereof, and in making advances. The only question discussed or decided was whether the contract of purchase and sale were gambling contracts.

In *Hansborough* v. *Neal* (27 S. E. Rep., 593) it was decided that "a real estate agent seeking to recover commissions for negotiating a sale, where no contract was made in regard thereto, may prove the custom as to the rate of commissions, and the time of payment, in the place where the business was done and the land sold."

In *Lacer* v. *Hotaling* (46 Pac. Rep., 1070) the action was by architects to recover for services, and it was held that evidence of a rule of compensation of architects established by architects' institutes and associations was not admissible when not accompanied by any proof that the

rule was known to the defendant at the time of the alleged contract, or that it was so generally accepted by the public as to give it the standing of a custom, knowledge of which was to be imputed to him.

The right of architects by their institutes or associations to fix rules of compensation was not considered or decided.

In *Thomas* v. *Brandt* (26 Atl., 524) it is held that—

> Where there is a custom by which real estate agents are entitled to a commission of $2\frac{1}{2}$ per cent on large transactions, in the absence of a special agreement to the contrary, an owner who promised to pay a broker the "usual commission" for effecting a sale of his land is bound to pay the $2\frac{1}{2}$ per cent, though he supposed that a smaller rate was the customary brokerage in large transactions.

In *Sewell* v. *Corp.* (1 C. & P., 393) it is held that—

> The certificate of a veterinary college that the plaintiff had attended lectures there is not admissible in evidence, as not coming from a body known to the law. If there is a general usage applicable to a particular trade or profession, a person employing one in such trade or profession will be taken to have dealt with him according to that usage; but a usage for a veterinary surgeon to charge for his attendances, when there was not much medicine required, is too uncertain.

In *Kraft* v. *Faucher* (44 Md., 204) it is said:

> It is now well settled, in the absence of any clear expression to the contrary, that he who deals in a particular market must be taken to deal according to the custom of that market, and he who directs another to make a contract at a particular place must

be taken as intending that the contract may be made according to the usage of that place; and in this case it is quite immaterial that the principal himself is unacquainted with the usage or custom with reference to which his agent or factor may deal.

In *Perin* v. *Parker* (126 Ill., 200) a question arose under the rules of the Chicago Board of Trade in reference to the requirement of margins, and that is the only question decided.

In *Bailey* v. *Bensley* (87 Ill., 556) the main controversy, according to the court, was—

> In respect of these warehouse receipts, appellant insisting that the receipts issued upon the storing of his grain were his property, and that when appellees were directed by him to hold certain grain until he ordered its sale, it was their duty to retain the identical warehouse receipts issued for that grain; whereas appellees maintain that, according to the usage and custom in the transaction of business by commission men doing business on the board of trade in Chicago, in holding the grain or in making sales of it on account of any particular shipper, no attention is paid by the commission man to the matter of holding or transferring the identical receipts which were received by him, and when that person's grain was received into the warehouse, etc.

In *Peabody* v. *Squires* (56 N. Y., 230) it is said:

> In an action upon a coal contract between members of the New York Coal Exchange, its constitution subscribed by them and the by-laws made by the members are competent evidence, and the provisions thereof prescribing the mode of performing such contracts between members for this purpose become part of the contract.

In *London Association* v. *Clark* (L. R., 20 Q. B. D., 576) it is said:

> A contract for the sale of shares in a registered company was made through brokers upon and subject to the rules of the stock exchange. In accordance with the practice of the stock exchange the transferee of the shares paid the price of them to the vendor upon delivery to him of a duly executed transfer. An application for registration of the transfer being subsequently made to the directors of the company, who were empowered by the articles of the association, in their discretion, to decline to register a person claiming by transfer of shares, they refused to register the transferee as a member of the company.

And this was held proper.

In *Cruse* v. *Paine* (L. R., 6 Eq., 641) the following case was under consideration:

> Plaintiff, on the 2d of November, 1865, through his brokers, sold 100 shares to the defendants, who were stock jobbers. The sale note expressed that the sale was by order of the plaintiff; that it was "subject to the rules of the London Stock Exchange," and "with registration guaranteed;" also that payment was to be made on the 15th of November following. Shortly before this date the defendant sent to the plaintiff's brokers the name of H. as transferee, with the purchase money, and the transfers were executed by plaintiff to H. and handed to his brokers. The transfers not having been registered, the defendants, in December, 1866, obtained a decree for specific performance by H. of the contract with them, and for indemnity. Meantime the company had been wound up, and the plaintiff's claim, being still on the register, was settled on the

list of contributories. He then filed this bill against the defendants for specific performance and indemnity.

Held, that stock jobbers are principals and personally liable upon the contracts into which they enter.

Held, further, that the above facts did not disclose a novation of, or substitution of another contract for, the original contract; and that the plaintiff was entitled to a decree for specific performance, and indemnity.

In *Mitchell* v. *Newhall* (15 M. & W., 308) it is said:

The defendant gave to the plaintiff, a broker on the stock exchange, an order to purchase for him 50 shares in a foreign railway company. At that time no shares of the company were in the market, the foreign Government not having yet authorized its establishment; but letters of allotment for shares were then, according to the evidence of persons on the stock exchange, commonly bought and sold in the market as shares. The plaintiff bought for the defendant a letter of allotment for 50 shares.

Held, that a jury might well find that this was a good execution of the order.

In *Sutton* v. *Totham* (10 A. & E., 27) it is held that "a person who employs a broker on the stock exchange, impliedly gives him authority to act in accordance with the rules there established, though such principal himself may be ignorant of the rules."

Ward v. *Vosburgh* (31 Fed. Rep., 12) involved the question whether a certain deal made on the Chicago Board of Trade was a gambling transaction. The action was for advances and commissions. How the commissions were to be determined, whether by contract, by

rule of the board of trade, or by evidence of reasonable value, does not appear. No issue of that sort was made or determined. It was held that—

> A speculator who is familiar with the methods and usages of the Chicago Board of Trade is presumed, upon giving orders to his broker, a member of that body, to contract with reference thereto; and he will not be heard to set up as a defense to a suit by the broker for commissions and advances that the custom prevailing there, in obedience to which the advances were made, enlarged his liability under the contract.

Clark v. *Foss* (7 Biss., 540) is another case where Chicago Board of Trade transactions were attacked as gambling devices. It was held that the particular transaction under consideration should be upheld.

In *Maxted* v. *Paine* (L. R., 6 Ex., 132) the rules of the stock exchange in reference to the transfer of shares was under consideration. The court said (p. 142):

> The rules appear to have been framed for the twofold purpose of giving all possible facility for the transmission of shares from hand to hand in the interval between the purchase and the settling day, and also of securing and enforcing by the agency of a domestic tribunal the *bona fide* performance of the contracts.

In *Steward* v. *County* (8 M. & W., 160) it is said:

> In an action for the nonacceptance of railway shares, which, by the contract (made in Liverpool, through brokers), were to be delivered in a reasonable time, a written rule of the Liverpool Stock

Exchange, stated to be acted upon by all the Liverpool brokers—"that the seller of shares was in all cases entitled to seven days to complete his contract by delivery, the time to be computed from the day on which he was acquainted with the name of his transferee"—was held admissible on an issue whether the plaintiff, within a reasonable time, was ready and willing and offered to transfer the shares, although it was not proved that either of the parties or their brokers was a member of the Liverpool Stock Exchange.

The case of *Bayliffe* v. *Butterworth* (1 Ex., 425) is as follows:

The defendant, who resided some distance from Liverpool, authorized the plaintiff, a broker there, to sell for him twenty railway scrip shares. The plaintiff sold them to C., another broker of Liverpool. The scrip shares were not delivered on the day, and C. bought twenty other scrip shares at the market price, and claimed the difference between the contract and the market price. The plaintiff paid him the difference and brought an action for money paid to recover this sum. It was proved to be the usage among brokers at Liverpool to be responsible to each other upon these contracts, and there was evidence that the defendant was cognizant of this usage:

Held, that the defendant was liable.

Kock v. *Emmerling* (22 How., 69) is as follows:

Where an agent was employed to sell an estate in Louisiana and the owner refused, without sufficient reason, to fulfill an agreement which the agent had made, a right to demand compensation accrued to the agent, the amount of which is to be settled by established usage.

In *Gillespie* v. *National Bank* (41 Fed. Rep., 231, and 137 U. S., 411) the following question was decided:

> A bank receiving on deposit from a factor, under the circumstances set forth in this case, moneys which it must have known were the proceeds of property of the factor's principal, consigned to him by the principal for sale on the principal's account, of which moneys the principal was the beneficial owner, can not as against the latter appropriate the deposits to the payment of a general balance due to the bank from the factor, and if it attempts to do so, the remedy of the principal against the bank is in equity and not in law.

In *Hitch* v. *Hawley* (132 N. Y., 212) the following ruling was made:

> A corporation organized under the act of 1877, providing for the organization of exchanges or boards of trade, may be dissolved by the court upon petition and consent of a large majority of its trustees and members, when it appears that it is doing no business because of the diverse interests of its members, although the corporation is solvent and a minority of the trustees and members oppose the dissolution.
>
> When it appears that the interest of the stockholders of such a corporation are so discordant as to prevent efficient management, and that a large majority of its trustees and members wish to wind up its affairs by a dissolution, the fact is established that the dissolution will be for the interests of the stockholders.

The quotation referred to in plaintiff's brief, page 118, is taken from the testimony of certain witnesses.

In *Jones* v. *Powell* (6 Beav., 488) it is held that—

> An executor, upon transferring stock to a legatee, paid one-sixteenth per cent to a stock broker for *identifying* him at the bank. He was allowed the payment in passing the accounts.

In *Davenport* v. *Powell* (14 Sim., 275) it is held—

> A party who has been ordered to transfer large sums of stock into court, paid the broker at the rate of 1s. 3d. per cent for *identifying* him on making the transfer.
>
> *Held*, that the payment was proper and ought to be allowed in taxing the parties' costs.

The court said:

> It is is admitted that in the case of a transfer to a party it is usual to allow the broker one-sixteenth—that is, 1s. 3d. per cent upon the same transfer.

It does not appear that these charges were "the usual commissions, being those fixed by the schedule of an exchange," as stated in appellants' brief.

It is thus made apparent that not one of the numerous cases cited and relied upon by counsel under this heading sustains the claim that exchanges *may by rule adopt a minimum commission for services rendered*. On the contrary, in not one case was the question of the right to fix a commission or rate of remuneration considered or determined. Had there been any such case, it is reasonable to suppose that the extensive and exhaustive research of counsel would have discovered it, and that it would here be referred to for the convenience of the court. No such case having been found, are we not justified in assuming that none exists?

Counsel for appellants (p. 119) propound

A SERIES OF INQUIRIES,

and ask, If usages tend to the convenience of the public and are to the benefit of the trade, how can a codification of them be held to be illegal? We are not aware that anyone is urging their illegality. It may be, as appellants suggest, that "a court will adopt an exchange rule as evidence that a usage codified therein is so notorious that judicial notice may be taken of it;" but it nowhere appears that *any court has ever adopted any such usage or any such rule as is here complained of as illegal.*

It is also asked why London has continued to be the great financial center of the world in spite of the efforts of the stock exchange to restrain the trade of that city. As before stated, the London Stock Exchange is under the supervision of the Government. The rates of commissions are fixed and established by law. It does not appear to have any by-law restricting the number of employees of its members, or restraining the sending of telegraph or telephone messages, nor does it appear that the members of the exchange have an exclusive right or arrogate to themselves the exclusive right of dealing in stocks in the city of London. It is quite likely that such an institution would not be tolerated, even in the absence of an antitrust act.

Counsel also desire to know how it has been possible for Chicago to become the largest grain and live stock market in the world in spite of the existence of two exchanges. As to the legality of the Chicago Live Stock Exchange, counsel are respectfully referred, for an answer,

to the opinion of the Supreme Court in *People* v. *Chicago Live Stock Exchange* (48 N. E. Rep., 1062).

We are willing to concede the truth of the statement of counsel that large cities, such as Chicago, New York, Philadelphia, Baltimore, etc., have established exchanges. It is also true that those cities have banks, mercantile houses, and other enterprises of various kinds; but because banks are necessary in cities in order to promote and facilitate trade, it has never been supposed that they were thereby given a license to violate the law, or that if their officers were guilty of infractions of the law they could point to the existence of banks and their beneficial influence upon commerce as a complete answer to a charge of criminal conduct; and the same may be said of mercantile and other enterprises.

It is insisted that all exchanges "are framed on the same model." This is respectfully denied, except as, in a very general way, it may be said that all men are framed on the same model; but it is nevertheless true that some are law-abiding and others criminal. So it may be said that all churches are, in one sense, framed on the same model and have the same general purpose; but this could scarcely be pleaded in defense of a member of the Mormon Church who had trangressed the laws.

It is also said that "all live stock exchanges have precisely the same rules and regulations." The record does not disclose whether this statement is correct or not. If it be true, it does not argue much in behalf of the appellants, since, so far as they have been tested, the Kansas City Live Stock Exchange and the Kansas City

Traders' Exchange have each been held illegal by circuit courts of the United States, and the former also by the Kansas court of appeals; the Chicago Live Stock Exchange has been held to be illegal by the supreme court of Illinois, and the Omaha Live Stock Exchange has been attacked in a similar manner.

May we be permitted to imitate counsel for appellants in also propounding

"A SERIES OF INQUIRIES?"

If exchanges promote trade and facilitate commerce, and if the object of this particular exchange is to "promote and protect all interests connected with the buying and selling of live stock at Kansas City, and to promote and enforce among the members correct and high moral principles in the transaction of business," as set forth in the by-laws, *why are they not willing to operate the exchange for the accomplishment of these high moral aims?*

Why is it necessary that nonmembers of the association should be *prohibited from doing business in competition with them?*

Why is it that the exchange includes *not only* commission men (for whom alone, by its rules, it seems to be adapted), *but also the packing houses*, and so combines under one management both the sellers and the buyers?

Since the avowed purpose of the exchange is to promote honorable conduct and "high moral principles," why is this purpose not satisfied *by permitting nonmembers to sell to the packing houses, provided such nonmembers may be able to offer attractive bargains, with a sufficient guaranty of their "high moral principles?"*

Why would it not be a *complete vindication of the purpose of the exchange*, in promoting and enforcing "correct and high moral principles in the transaction of business," if there were *two sets of commission men* at Kansas City, one belonging to the exchange, the other composed of nonmembers? The packing houses (who are the buyers) would then have a choice in making their purchases from members or nonmembers. If, as appellants contend, the inculcation of high moral principles by the exchange would be so complete as to make the members and their bargains *especially attractive to the packing houses*, they would have nothing to fear from *the competition of nonmembers*.

Why are the appellants *unwilling* to apply to their business the test of *free competition* in the matter of their charges, since that is the rule of trade of this country and must apply equally to merchants, lawyers, doctors, and men of every class?

Why is it that *50 cents* per head commission is now charged instead of *25 cents* per head, the commission charged *before the formation of the exchange*?

Why is it that an entrance fee of $2,500 is now charged for admission to the exchange, *unless it be that that is the price which the privilege of monopoly commands*?

Why is it necessary that the solicitors of the various members should be *restricted to three*, or *prepaid messages prohibited*, unless it be to *prevent competition*?

Is there any reason why the elimination of these rules, so objectionable to the policy of this country, will not satisfy the *appellants' zeal in the promotion of "high moral principles in the transaction of business,"* without

combining to *crush out competitors*, who are willing, if they can, to engage in commission business even with the *odium* which would attach to them by exclusion from this high-moral-principle-producing combination?

If we were to concede to be true all that is said in praise of exchanges, the fact still remains that appellants could organize and operate an exchange *containing all of the blessings which flow from that form of combination* by *eliminating* from their rules those which are here challenged as unlawful. *If the same consummate ability were employed in remodeling the exchange on legal lines as is now displayed in seeking to evade legal responsibility, this result would doubtless be accomplished.*

A number of authorities are cited (p. 121) under the heading of,

"CONTRACTS TO FACILITATE TRADE."

The distinction is pointed out between contracts or combinations to restrain trade and those entered into for the purpose of facilitating trade and which effect its promotion. Counsel cite *Cannon* v. *New Orleans* (20 Wall., 577); *Packet Co.* v. *Keokuk* (95 U. S., 80); *Sands* v. *Manistee River Improvement Co.* (123 U. S., 288); which hold that in respect to wharves and the removal of obstructions from rivers and the making of a reasonable charge therefor they belong to the class of subjects over which the States and the National Government have concurrent jurisdiction. They are local and not national in their character, and the nonaction of Congress gives to the States power to legislate in this respect until Congress shall assume jurisdiction itself. As before pointed out in the case at bar, Congress, by the act of

July 2, 1890, has assumed jurisdiction, *even as to these matters*, in respect of contracts, combinations, and monopolies in restraint of trade, so that the rule of these cases has now no application.

Taff Vale Railway Co. v. *McNabb* (L. R., 6 H. L., 169) is cited by appellants in support of the proposition that contracts to facilitate trade are not in restraint of trade. No such question is involved in that case as entitles it to the emphasis given it by appellants.

The court says:

> It was contended that the covenant for the breach of which the action was brought was void as being in restraint of trade. No doubt, if a person is, *without consideration*, prohibited from carrying on trade, either absolutely or within an unreasonable distance from another, the prohibition is against public policy and void. But I can not see how the covenant in question falls within the principle. The trustees leased to the directors land on the east side of the Bute Dock, to enable them to use the dock for the shipping and unshipping of traffic conveyed to and from their railway. The trustees grant to them the privilege of using the dock and the land leased and afford them facilities for the use upon a payment to be made in a particular mode. It may be that this mode of payment is not a desirable one, and that more is exacted by the way of consideration than ought in prudence to have been agreed to; but how it can be considered to be in restraint of trade I can not conceive. It is not a prohibition but a permission to carry on trade. *The directors tie their hands only by saying that, in consideration of the advantages they will enjoy by the use of the dock, if they carry their goods anywhere else they will pay as if they had used the dock.*

Central Shade Roller Co. v. *Cushman* (143 Mass., 353) is also cited. This case can scarcely be called authority at the present day under the act in question, since the court says:

> The general purpose of the combination was to *prevent* or rather to *regulate competition* between the parties to it in the sale of the particular commodity which they made. This was a *lawful purpose*.

In *Stephens* v. *Southern Pacific Ry. Co.* (109 Cal., 86) it is held that:

> The covenant in the contract of lease that the railroad company should not be responsible for any damage caused by fire is valid, and not void as against public policy; nor are the dangers and risks to the public as to the destruction of its property by fire in any degree increased by the covenant between the parties.

Just what bearing this case has upon the subject under consideration is not apparent.

THE STATUS OF COMPETING NONMEMBERS.

This heading is misleading. In appellant's exchange there are no "competing nonmembers." Competition does not exist. It would, perhaps, have been more accurate to have headed the discussion "Status of nonmembers who are not permitted to compete."

The opinion of Judge Taft (62 Fed. Rep., 820) is cited in support of the proposition that "the normal operation of the right to labor is the securing of better terms by refusing to contract for labor except on such terms." This is true; but it is also true that laborers

have no right to interfere with the *rights of others*, and this is pointed out by Judge Taft (p. 818):

> All the employees had the right to quit their employment, but they had no right to combine to quit, *in order thereby to compel their employer to withdraw from a mutually profitable relation with a third person*, for the purpose of injuring that third person, when the relation thus sought to be broken had no effect whatever on the character or reward of their services. *It is the motive for quitting, and the end sought thereby, that make the injury inflicted unlawful and the combination by which it is effected an unlawful conspiracy.*

The court also quotes with approval the following cases, which sustain our position here:

> *Temperton* v. *Russell* (1893), 1 Q. B., 715.
> *State* v. *Glidden*, 55 Conn., 46.
> *State* v. *Stewart*, 59 Vt., 273.
> *Steamship Co.* v. *McKenna*, 30 Fed. Rep., 48.
> *Casey* v. *Typographical Union*, 45 Fed. Rep., 135.
> *Toledo Railway Co.* v. *Pennsylvania Co.*, 54 Fed. Rep., 730, 738.

The application of the act of July 2, 1890, to the state of facts there under consideration is declared.

In this connection it may be stated that in *Angle* v. *Railway Co.* (151 U. S., 1, 12, 14), Mr. Justice Brewer cited with approval *Lumley* v. *Gye*, El. & Bl., 216; *Bowen* v. *Hall*, 6 Q. B. D., 333, 337; *Walker* v. *Cronin*, 107 Mass., 555.

In speaking of the rule of these cases Mr. Justice Brewer said:

> In the opinion of Brett, L. J., it was said, "that wherever a man does an act which in law and in fact

is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie."

Bonsack Machine Co. v. *Smith* (70 Fed. Rep., 383) is also cited. The court there says:

> Any interference by any department of the Government with *open competition in the markets would stifle trade and finally drive out all competition.* "If there is one thing which public policy requires more than another it is that men of full age and competent understanding shall have the *utmost liberty of contracting.*"

Attention is also called to *United States Chemical Co.* v. *Provident Chemical Co.* (64 Fed. Rep., 946). There the court says (p. 950):

> Combinations in the nature of modern trusts, so soundly condemned, *are those which aim at a union of energy, capital, and interest to stifle competition and enhance the price of articles of prime necessity and staples of commerce.*

In *White* v. *Baxter* (9 J. & S., 358) it is held that a broker buying stock in behalf of a client is personally bound to the seller, and if the client refuses to provide margins, the broker may have his action to recover the amount of his own liability.

In *Walls* v. *Bailey* (49 N. Y., 464), also cited, the action was instituted to recover a balance alleged to be due to the plaintiffs for plastering the defendant's house. The only ruling made by the court was that the "parties are presumed to contract in reference to a uniform, continuous, and well-settled usage pertaining to the matters as to which they enter into agreement, where such

usage is not in opposition to well-settled principles of law and is not unreasonable."

The following cases are also cited on this proposition:

Peabody v. *Norfolk*, 98 Mass., 452.
Salomon v. *Hertz*, 40 N. J. Eq., 400.
Thum v. *Tloczynski*, 72 N. W. Rep., 140.
Washburn v. *Nat'l. Wallpaper Co.*, 81 Fed. Rep., 17.

The last case holds that "the good will of the business is property and may have a value independent of any particular locality or any specific tangible property, and stock of a corporation issued for such good will is issued for property actually received within the meaning of the New York stock corporation law." The other three cases simply hold that the knowledge of an employee of secret processes of manufacture, gained by him during his employment, must not be divulged, and injunction will issue to prevent the employee from making use thereof. The pertinency of these cases is not apparent.

THE ADVANTAGES OF EXCHANGES.

It is said that "trade is promoted, better facilities provided, fixed and reasonable rates established," etc.

The same might be said of the elevators in *Munn* v. *Illinois* (94 U. S., 113), of *Cotting* v. *Kansas City Stock Yards Co.* (82 Fed. Rep., 850), and various other cases which are denominated by the courts monopolies, to the extent that regulation is beneficial.

It is stated by counsel (p. 127) "that the courts—American, English, and French—by a long and unbroken

line of authorities, adjudge such an association to be 'a lawful body, organized for lawful purposes' (*Bibb* v. *Allen*, 149 U. S., 489), and its rules 'to be deserving of no animadversion whatever' (Lord Chancellor Cairns, 3 App. Cas., 220), and not to be 'open to objection on the ground of public policy' (Mr. Chief Justice Fuller, 142 U. S., at 12; Sawyer, J., in *Hyde* v. *Woods*, 2 Sawyer, 655), and declare their purpose to be a 'laudable one' (*In re Haebler*, 149 N. Y., 414; *State* v. *Chamber of Commerce*, 47 Wis., 685)."

Bibb v. *Allen* does not decide that any exchange was "a lawful body, organized for lawful purposes." The issue in the case was the legality of a certain sale on the New York Cotton Exchange. The answer claimed that the sales were "wagers, bets, and gambling transactions." Whether or not there were rules of the exchange regulating commissions does not appear. One of the errors assigned related to the admission in evidence of the statutes of New York under which the New York Cotton Exchange was organized, together with the rules and regulations of that body, under and in pursuance of which the transactions in question were conducted. The court held that the evidence was competent, because the contracts entered into contemplated that the business would be done in accordance with the rules of the New York Cotton Exchange.

The court said:

> It was proper, therefore (referring to the admission of the rules and statutes), to show that this cotton exchange was a lawful body, organized for lawful business purposes, and had power to make such

> rules and regulations as might be deemed necessary and proper to carry out the purpose of its organization.

It may be remarked, in passing, that the appellants are now claiming that this court should take judicial notice of the rules and regulations of all the various exchanges—American, English and French—which claim seems to be opposed by the foregoing case.

The rules under consideration in *Tompkins* v. *Saffray* (3 App. Cas., 213) were rules in reference to the disposition of the assets of a bankrupt member, and not such rules as are here in controversy.

In *Sparhawk* v. *Yerkes*, (142 U. S., 1) and *Hyde* v. *Woods* (94 U. S., 523, s. c. 2 Woods, 655) it was held that—

> The *ownership of a seat in a stock board is property*, not absolute and unqualified, but limited and restricted by the rules of the association. *Such rules, in imposing the condition upon memberships that the proceeds should be first applied to the benefit of creditor members*, are not open to objection on the ground of public policy or because in violation of the bankrupt act.

In *In re Haebler* (149 N. Y., 414) it was decided that a member of an exchange may be expelled for improper conduct. This and nothing more.

In *State* v. *Chamber of Commerce* (47 Wis., 685) a by-law was sustained which fixed the place where the meetings of the association should be held and prevented their being held at other places.

It is apparent that when counsel speak of "an association" and say that it has received the approval of so

many courts the statement is unintentionally misleading. The rulings made by the various courts in the cases cited are well-settled law and militate in no degree against the position of the Government in this case.

In further support of the advantages of exchanges appellants cite the case of *Bangs* v. *Harwick* (37 Fed. Rep., 97), where the controversy was over a promissory note, alleged to have been given for a gambling debt in speculating in stocks, apparently on the Chicago Board of Trade. No other question was considered or passed upon.

Hanson v. *Boyd* (161 U. S., 397) was a case where certain transactions conducted on the board of trade at Chicago were challenged as gambling transactions.

The charge of the lower court was as follows:

> If the contract is lawful, the putting up of *margins* to cover losses which might accrue from fluctuations in prices in final settlement of the transaction according to the rules and usages of the board of trade of the city of Chicago is entirely proper and legitimate. These rules have been read to you by counsel for plaintiffs, and there is nothing in these rules on their face that indicates that they are in violation of the laws of Illinois or contrary to public policy.

The court is speaking of option contracts, and finds that the rules, "on their face," have apparently been so skillfully drawn that the illegality, if any, has been concealed or disguised. There is absolutely nothing in this case indicating, even remotely, that rules or by-laws such as are in controversy in this case were there passed upon

or approved or disapproved, nor were the advantages of exchanges discussed.

The other cases cited have absolutely no bearing which we can discover.

Upon the subject of clearing houses and the history, objects, operations, and rules of prominent exchanges, the Paris Bourse, the London Stock Exchange and its rules, the New York Stock Exchange and its rules, and various other exchanges, to which so much prominence is given in appellants' brief, we desire to make no other reply than to say that it is inconceivable to us how the discussion can in any possible way affect this controversy.

At page 227 of appellants' brief there is a discussion of

"AGREEMENTS NOT TO DEAL WITH OTHERS."

Matthews v. *Associated Press* (136 N. Y., 333) is cited in support of the appellants' position; but it is apparent from a reading of the report that it has little bearing on the questions involved, since the restraint there is held to be *reasonable*, and therefore not against public policy.

The court said (p. 341):

> It seems to me this by-law is a natural and *reasonable restraint* upon the members of the association, appropriately regulating their conduct as members thereof with respect to the business which the association was specially organized and incorporated to transact.

The case does decide that *there was a restraint imposed by its by-laws*, and the inference is irresistible that if there had been a statute, as in this case, which made restraints unlawful, *whether reasonable or unreasonable*, the association would have fallen within its condemnation.

Commonwealth v. *Hunt* (4 Mete., 111) draws the distinction between an association which is lawful and one which is unlawful.

The court said:

> The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes or *for dangerous and pernicious ones.* If the latter were the real and actual object, and susceptible of proof, *it should have been specifically charged.* Such an association might be used to afford each other assistance in times of poverty, sickness, and distress; or to raise their intellectual, moral, and social condition; or to make improvement in their art; or for other proper purposes. *Or the association might be designed for purposes of oppression and injustice.*

This case, in some respects, seems to have been overruled or modified in the more recent case of *Vegelahn* v. *Guntner* (44 N. E. Rep., 1077), where it is cited and relied upon in support of the dissenting opinion.

Collins v. *Locke* (L. R., 4 App. Cas., 674), also cited on this proposition, is decided upon the theory that a reasonable restraint of trade is proper and lawful. It is, therefore, no authority in a case like the present, where the reasonableness of the restraint is immaterial.

The court there said:

> The modern decisions have mostly turned on the question of the *reasonableness of the restraint* in relation to the objects of the contract.

Carew v. *Rutherford* (106 Mass., 1) is an authority against the position of the appellants rather than in their favor. It is there decided that—

> A conspiracy to obtain from a master mechanic, whose business requires the employment of workmen, money which he is under no legal liability to pay *by inducing or threatening to induce workmen to leave his employment, and deterring or threatening to deter others from entering it, so as to render him reasonably apprehensive that he can not carry on business without making the payment, is illegal;* and, in an action of tort, he may recover the sum so paid and damages for the injury of his business by the acts of the conspirators.

The court there justly observed (p. 15):

> Freedom is the policy of this country. But freedom does not imply a right in one person, either alone or in combination with others, *to disturb or annoy another, either directly or indirectly, in his lawful business or occupation, or to threaten him with any annoyance or injury for the sake of compelling him to buy his peace.* The acts alleged and proven in this case are peculiarly *offensive* to the *free principles* which prevail in this country; and if such practices could enjoy impunity they would tend to establish a *tyranny of irresponsible persons* over labor and mechanical business which would be *extremely injurious* to both.

Bohn Manufacturing Co. v. *Hollis* (54 Minn., 223) was a ruling on the following facts: A large number of retail lumber dealers formed a voluntary association, in which they mutually agreed that they would not deal with any manufacturer or wholesale dealer who should sell lumber directly to consumers not dealers at any point

where a member of the association was carrying on a retail yard, and provided in their by-laws that whenever any wholesale dealer or manufacturer made any such sale their secretary should notify all the members of the fact. The plaintiff made such a sale, and the secretary threatened to send notice of the fact, as provided in the by-laws, to all the members of the association. It was held not actionable.

The court said (p. 232):

> When reduced to its ultimate analysis, all that the retail lumber dealers in this case have done is to form *an association to protect themselves* from sales by wholesale dealers or manufacturers directly to consumers or other nondealers at points where a member of the association is engaged in the retail business. The means adopted to effect this object are simply these: They agree among themselves that they will not deal with any wholesale dealer or manufacturer who sells directly to customers not dealers at a point where a member of the association is doing business, and provide for notice being given to all members whenever a wholesale dealer or manufacturer makes any such sale. *There was no element of fraud, coercion, or intimidation, either toward plaintiff or the members of the association.*

It is apparent that there was here a partial restraint of trade, which the court, in the absence of a statute prohibiting partial restraints, held not to be unreasonable, following *Mogul Steamship Co.* v. *McGregor* (1892) (App. Cas., 25).

If the association in this case had been composed of the *retail dealers and the wholesale dealers*, with by-laws prohibiting dealing with nonmembers, and *establishing*

prices or *margin of profits* in the sale of lumber, and providing *heavy penalties* for infractions thereof, and *successfully controlling the entire business*, so as to *effectually prevent* any person not a member from dealing in the market, the case would have some elements of similarity to the one at bar. We respectfully submit that no one would regard such an organization as legal.

Brewster v. *Miller* (41 S. W. Rep., 301) is also cited. It appears that the articles of a funeral directors' association provided that members were not to render services for or furnish burial material to any person who failed or refused to discharge an existing indebtedness to any member of the association. This was held not to give rise to a civil action. It was, however, apparently conceded that the articles in question constituted a trust or conspiracy, as the court says:

> So, even if some of the articles of this association constitute a trust or conspiracy, still if there is *no overt act done in pursuance of such illegal provisions* which produce actual legal damages to the plaintiff he could not maintain his action. It would be a question with which the State should deal.

Delaware Railroad Co. v. *Stock Yards Co.* (45 N. J. Eq., 50) decides that a stock yards company, except in the character of the property which is subject to bailment, corresponds in many respects with the business of warehouseman, and that as a warehouseman can not have the possession of other men's property, with its accompanying duties and responsibilities, forced upon him against his will, so the stock yards company may decline to receive stock if it so desires.

In the case of *Thomas* v. *Musical Union* (121 N. Y., 45), the validity of the defendants' by-laws was not passed upon.

The court said (p. 54):

> We do not deem it necessary to consider the question of the validity of the by-laws, *as they are not necessarily involved in the determination of the action.*

The court held that the action was prematurely brought, saying:

> He could have urged to the board the *invalidity* of the by-laws, etc.

Much stress is laid upon the case of *American Live Stock Co.* v. *Chicago Live Stock Exchange* (143 Ill., 210). It is to be noted that that case was a controversy between the corporation and *one seeking membership therein.* The court holds that, even if the by-laws are against public policy (and this is practically conceded), they are illegal *only in the sense that the courts will not enforce them.* It is apparent, not only from what is said in the case, but from the subsequent ruling in *People* v. *Chicago Live Stock Exchange* (48 N. E. Rep., 1062), that had the legality of the association been attacked by the *State*, or some *representative of the public*, a different question would have arisen and doubtless a different ruling made.

The court said:

> A by-law of a corporation whose members are engaged in the buying and selling of live stock in a public market open to all which prohibits its members from dealing with certain other classes of corporations or their agents, if construed to be in

restraint of trade, and therefore against public policy, *is illegal only in the sense that the courts will not enforce the same.*

The law does not prohibit the making of contracts in restraint of trade, but merely *declines to recognize their validity* or to *enforce them.* A party to such a contract is not bound to perform it, but he may perform it if he sees fit, and his doing so exposes him to no legal animadversion.

Again, the court says (p. 235):

> They are simply void. The law does not *prohibit* the making of contracts in restraint of trade; it merely declines, after they have been made, to recognize their validity. If the by-laws in question are invalid because of being an *improper restraint of trade*, they are merely *void*, and the members of the exchange being under no legal obligation to obey them may perhaps be entitled at their own instance to protection against such disciplinary consequences as the exchange may see fit to impose in case of disobedience. But such *protection* can not be *invoked* in their behalf by a *stranger*, nor can they be required to disobey such rules except at their own volition.

The court here cites and follows *Mogul Steamship Co.* v. *McGregor* (1892) (App. Cas., 25), which this court has said, in the Trans-Missouri Freight Association Case, is inapplicable to proceedings under the antitrust act.

In *Macauley* v. *Tierney* (33 Atlantic, 1), it is said:

> An agreement by the members of a national association of master plumbers to withdraw their patronage from any dealer selling supplies to others than master plumbers is not unlawful, even though master plumbers be construed to mean the members of said association.

This case follows and is bottomed upon the case of *Mogul Steamship Co.* v. *McGregor*, and *Bohn Manufacturing Co.* v. *Hollis*, *supra*, and is inapplicable for the reasons suggested in our comments heretofore made on those cases.

Dueber Watch Co. v. *Howard Watch Co.* (55 Fed. Rep., 851) is also cited by appellants. The same case before the court of appeals is reported in 66 Fed. Rep., 637. Contracts in reference to the sale of watch cases were the subjects of the controversy. The case was decided before the authoritative construction of the anti-trust act by this court in the Trans-Missouri Case.

Judge Lacombe distinguishes the cases on the ground that the goods in question are not articles of prime necessity. He says (p. 642):

> The goods in question *are not articles of prime necessity*, as were the flour, coal, and other staple commodities referred to in many of the cases cited upon the argument; nor were the manufacturing defendants engaged in *any public or quasi-public business*, as were the railroad or the gaslighting companies referred to in other cases.

Judge Shipman concurred in sustaining the demurrer, but *solely* on the ground that the complaint charged an *attempt* to commit an offense without alleging its *actual commission*. He held that the business stated in the complaint was interstate commerce. He says:

> The important allegations in regard to the conduct of the combined defendants and the results of the acts are that the complainant owned an extensive watch-case manufactory in Kentucky, and subsequently in Ohio, and had the capacity to manufacture

and offer for sale 25,000 watch cases per month, and that before November 16, 1887, it sold all of said goods to a great number of dealers throughout the United States and Canada. *It may be admitted that this substantially alleges that the complainant engaged in interstate commerce.*

Judge Wallace said:

The primary purpose of the conspiracy set forth was doubtless to *compel the plaintiff to join in a compact with the other defendants to maintain an arbitrary price or scale of prices for their goods, or otherwise to drive the corporation out of business.* * * * No body of manufacturers is *justified* in *combining to coerce* a competing manufacturer to *join them* and sell his goods at a price to be fixed by them, and to *destroy his business* in the event of his refusal to do so; and it matters not that they propose to destroy his business by *peaceful methods of influencing his customers not to deal with him.* "Men can often do by the combination of many what severally no one could accomplish, and even what, when done by one, would be innocent." * * * I repudiate the doctrine that they can *combine* to induce the customers of a rival manufacturer *not to deal with him unless he will join their combination.* Upon the averments in this complaint, which are of course to be taken as true for the purposes of the demurrer, this case is one in which the defendants are acting not from motives of self-protection, but *oppressively*, and are *actively concerting to destroy the business of a rival by inducing other dealers not to trade with him because he will not sell his goods at their prices.*

THE LAW OF BOYCOTTS.

This question is also discussed in appellants' brief, page 231, and *Arthur* v. *Oakes* (63 Fed. Rep., 310) is

cited on the proposition that the members of the defendant exchange may refuse to deal, either collectively or individually, with any person as they please.

As we have endeavored to show heretofore, the right to withdraw one's business from another is unquestioned. It may be said abstractly that the right of any combination to withdraw their business from an individual is a right that may be lawfully exercised; but it is also true that such a combination, *if animated by a desire to injure the person or obstruct his business, is unlawful at common law.* This is tersely stated by Mr. Justice Harlan (63 Fed. Rep., 321) as follows:

> It is one thing for a single individual, or for several individuals, each acting upon his own responsibility and not in cooperation with others, to form for the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing, in the eye of the law, for many persons to combine or conspire together with the intent, *not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public.* An intent on the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent, and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized *as in itself wrongful and illegal.* Citing *Sherry* v. *Perkins*, 147 Mass., 212; *United States* v. *Kane*, 23 Fed. Rep., 748; *Emack* v. *Kane*, 34 Fed. Rep., 46; *Casey* v. *Typographical Union*, 45 Fed. Rep., 135; *Walker*

v. *Cronin*, 107 Mass., 555; *Callan* v. *Wilson*, 127 U. S., 540; *State* v. *Glidden*, 55 Conn., 46; *State* v. *Stewart*, 59 Vt., 273.

Continental Ins. Co. v. *Board of Fire Underwriters* (67 Fed. Rep., 310) is also cited. It is there held that—

> An association of fire underwriters, formed under an agreement providing for the regulation of premium rates, the prevention of rebates, the compensation of agents and nonintercourse with companies not members, is not an illegal conspiracy, and the accomplishment of its purposes by lawful means will not be enjoined at the instance of a company not a member of the association.

The opinion follows the McGregor Case. The distinction is recognized (p. 321) between attempts to secure a monopoly in articles of *prime necessity* and others.

The distinction is also made between an action by a nonmember against such an association for damages and an action by the Attorney-General directly against the organization.

Appellants' counsel cite *Jackson* v. *Stanfield* (137 Ind., 592) in support of the proposition that "it is not a mere passive, let-alone policy, a withdrawal of all business relations, intercourse, and fellowship, that creates the liability, but the threats and intimidation shown in the complaint."

A reference to this case seems to us somewhat unfortunate for the appellants. It is a case very much like the one at bar. The facts were as follows:

The Retail Lumber Dealers' Association of Indiana by its by-laws gave an active member a claim against a wholesaler for selling to a person not a regular dealer in

such member's community, provided for a hearing of the claim by a committee, and required members to refuse to patronize a wholesaler who ignored the committee's decision. Plaintiff, who was not a regular dealer, underbid defendant on a contract, but wholesalers refused to sell to him, and he was obliged to abandon the contract, because defendant, an active member of the association, had previously enforced a claim against a wholesaler who had sold to plaintiff, and expressed an intention of continuing to enforce such claims. *Held*, that defendant was liable for the amount which plaintiff lost by abandoning his contract, and would be perpetually enjoined from making a claim under the by-laws of the association against any person who sold to plaintiff.

In this case, as in the case at bar, there was a combination between the wholesale dealer and the retail dealer, the former being an "honorary" and the latter an active member.

The court said:

> The special findings of fact clearly show it to be a compact *to suppress the competition of those dealers who did not own yards with an adequate stock on hand, by driving them out of business.* By this plan they reach *the wholesale dealer* and compel him to pay an arbitrary penalty, *under a threat of financial injury*, and they force him to assist in *ruining the dealer* who does not own a yard.

In the present case it can not be denied that the purpose of the exchange is to suppress the competition of commission men who are not members of the exchange by driving them out of business. By this plan they reach the *packing houses* under a threat of an arbitrary penalty

of from $500 to $1,000, and so force them to assist in ruining the nonmember.

The court continues:

> There is such an element of *coercion* and *intimidation in the by-law under consideration* toward the wholesale dealers, manufacturers, and even the members of the society, and such provision made for penalties and forfeitures against them, that it will not do to say it was *optional* with the wholesale dealer whether it would pay the demand or not, or that it was left to the discretion or choice of the members to either trade with the wholesaler or abandon the association.

So, also, it may be said that there is such an element of *coercion and intimidation in the by-laws under consideration in this case toward the packing houses, commission men, and nonmembers*, and such provisions made for penalties and forfeitures against them, that it will not do to say that it was *optional* with the packer whether he would deal with the nonmember at his discretion.

Again, the court says:

> A conspiracy formed and intended, directly or indirectly, *to prevent the carrying on of any lawful business*, or to injure the business of anyone, *by wrongfully preventing those who would be customers from buying anything from the representatives of such business, by threats or intimidation, is in restraint of trade and unlawful.*

The court holds that the threats of withdrawal of patronage constitute threats and intimidation within the rule.

> "The object of the association," says the court, "and the result attained is a *monopoly of the trade by*

> *owners of yards*, and the broker is simply ignored by the wholesale dealers. It is not in point to cite cases where men *voluntarily agree to observe rules adopted by themselves*. This is no *voluntary affair* of the *wholesale dealers*. It is not even a combination of *wholesalers*. They may and do sometimes become *honorary members*, so as to keep within touch of the retail dealers and secure trade. It is, as stated, an *association of retailers to restrict the liberty of wholesalers to sell to consumers and brokers, and the wholesalers must obey or lose their trade*."

In *Cote* v. *Murphy* (159 Penn. St., 420) the statute had legalized combinations of workingmen to raise the price of labor. The court recognized that without such legislation such a combination would be *illegal*, using this language (p. 429):

> Before any legislation on the question it was held that a *combination of workmen to raise the price of labor, or of employers to depress it, was unlawful*, because such combination interfered with the price, which would otherwise be regulated *by supply and demand;* this interference was in restraint of trade or business and prejudicial to the public at large. Such combination made an *artificial price*.

It appeared that a traders' exchange established the price of labor, so that "by artificial means the market supply was almost wholly cut off." It was accordingly held to be lawful for the employers to combine to defend themselves against a demand "made altogether regardless of the price as regulated by the supply."

It is claimed that the appellants are in the exercise of

A PURELY PRIVATE OCCUPATION.

Whatever may be the rule elsewhere, it is, we submit, well established in this court that the occupation of the appellants is one affected with a public interest.

The Kansas City Stock Yards Company has been held to be affected with a public interest. (*Cotting* v. *Kansas City Stock Yards Co.*, 82 Fed. Rep., 851; s. c. 82 Fed. Rep., 844.)

Thayer, C. J., speaking on this subject, said:

> The public have a greater interest in said property and in the management thereof than any other private property, because it is located in a *large city*, at the *junction point* of many lines of railroad, which radiate therefrom in all directions; because of the *vast number* of cattle and other live stock which annually seek a market in the cities where the property is located or pass through said cities on their way to other markets; and because of the *manner in which, according to business usages, the traffic in cattle is carried on.* The stock yards in question furnish *the only proper facilities* in the cities where they are located for handling, resting, and feeding stock which is in the course of transit to other markets. It is the place where buyers and sellers of live stock congregate and transact their daily business, and for that reason it is *the only available market place* in said cities where live stock can be conveniently sold and delivered. The stock yards company, by its foresight and energy, has doubtless done much to create these conditions; but the fact remains that nearly all cattle shippers and dealers residing in

States and Territories tributary to the Kansas City market *are compelled to avail themselves of the facilities which the stock yards company affords and to pay such charges as it may see fit to impose;* therefore it is that the proper legislative body has the power to fix a limit to such charges, to the end that they may not become excessive and unreasonable. To such regulations every person and corporation must submit when their property is of such character or is so situated and subject to such environments that many people are compelled to become their patrons. (*Munn* v. *Illinois*, 94 U. S., 113, 130.)

In *Munn* v. *Illinois* (94 U. S., 130) various subjects are spoken of as being affected with a public interest and so subject to regulation. It is pointed out that Congress conferred power upon the city of Washington "to make all necessary regulation respecting hackney carriages and the rates of fare of the same, and the rates of haul by cartmen, wagoners, carmen, and draymen, and the *rates of commission of auctioneers.*" It is held that "property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large."

Various employments are instanced as being affected with a public use, such as the operation of ferries, wharves, cranes, warehouses, mills, bridges, turnpike roads, common carriers, and kindred subjects.

It is difficult to see why the doctrine of *Munn* v. *Illinois*, *supra*, does not apply to the defendant commission men. As pointed out by Judge Thayer, the stock yards is a place where buyers and sellers congregate and trans-

act their daily business. . *It is the only available market.* All cattle shippers and dealers residing in States and Territories tributary to the Kansas City market are *compelled* to avail themselves of the services of the commission men and to pay such charges as they may see fit to impose. The peculiar nature of the stock business, the fact that more than one stock yard in a large city is *impracticable*, and the fact that the selling of stock at the Kansas City yards is *impracticable without the aid of a commission man*, make his business one affected with a public interest.

Munn v. *Illinois* (94 U. S., 131) might be modified and paraphrased to correctly state the rule in reference to the appellants as follows:

> Under such circumstances, it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney coachman pursues a public employment and exercises "a sort of public office," these appellants do not. They stand, to use the language of their counsel, in the very "gateway of commerce," and take toll from all who pass. Their business most certainly "tends to a common charge, and is become a thing of public interest and use." Every animal for its passage "pays a toll, which is a common charge," and, therefore, according to Lord Hale, every such commission man "ought to be under public regulation, viz, that he take but reasonable toll." Certainly, if any business can be clothed "with a public interest, and cease to be *juris privati* only," this has been. It may not be made so by the operation of the *statute*, but it is by *the facts*.

So it appears that it is not the statute but "the facts" which affect an employment with a public interest. Indeed, the court says further (p. 134):

> In matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. *The controlling fact is the power to regulate at all.* If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied. In fact, the common-law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use.

This ruling has been affirmed in *Budd* v. *New York* (143 U. S., 517), and *Brass* v. *North Dakota* (153 U. S., 391).

The employment of the defendants, therefore, *being affected with a public interest*, the reasons are even more forcible than otherwise for prohibiting contracts and conspiracies in restraint of trade, and especially in reference to articles of *prime necessity*.

MATTERS ABOUT WHICH THE ATTORNEY-GENERAL CAN SUE.

It is objected that this action is improperly instituted by the Government. The objection is made that the Government has been hoodwinked in some way into the bringing of the action, in order to adjust private matters of difference between the defendant exchange and Greer, Mills & Co. It is sufficient to say in reply that if the organization of the appellants is lawful that

is the end of the controversy, and the existence or non-existence of private grievances are wholly immaterial. On the other hand, if the appellants' organization is unlawful and in violation of the act of Congress, it does not rest with them to say who shall or shall not be the prosecuting witness. It is unnecessary that they should be consulted in this respect. If, in criminal prosecutions, the defendant were permitted to plead in bar that the prosecuting witness was a *persona non grata*, few prosecutions would be successful.

Appellants' brief is replete with expressions of "bitter hostility," "personal vengeance and anger," "private malice," and the like. The affidavits of the complainant (and this brief, it is hoped) will be found to be free from expressions of feeling of this nature. It is a subject with which the Government is not concerned.

As appears from the official correspondence, which was read to the lower court, the matter was thoroughly investigated by the United States attorney, and afterwards the Attorney-General, with a full knowledge of all the facts, directed that this suit be brought. The signature of Mr. Judson Harmon, then the Attorney-General, will be found attached to the bill.

A similar question was presented in *People* v. *Milk Exchange* (39 N. E. Rep., 1062). It was there, as in the case at bar, claimed that the action of the authorities in instituting suit was instigated by a rival concern; but the court disposed of that contention in the following language:

> It is asserted that this litigation was instituted upon a petition of members of the Milk Producers'

Union, and that the purpose of that association was to enhance the price of milk. This may be, but the action was brought by the Attorney-General, and the influences that operated upon him to induce his prosecution of the defendant are now unimportant. The questions for our determination are presented by the pleadings, and the parties have the right to have them determined upon the merits.

Appellants finally assail the constitutionality of the act of July 2, 1890; but as this case was not raised in the court below, and no opportunity was given to the court to pass upon it, it is difficult to see how the question can be raised here.

Wasatch Min. Co. v. *Crescent Min. Co.*, 148 U. S., 293.

Brown v. *Massachusetts*, 144 U. S., 579.

Carpenter v. *Strange*, 141 U. S., 87.

It is respectfully submitted that the order and decree of the lower court should be affirmed.

JOHN K. RICHARDS,
Solicitor-General.

SAMUEL W. MOORE,
Special Assistant to the Attorney-General.

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HOPKINS *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 210. Argued February 28, March 1, 1898. —Decided October 24, 1898.

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The Kansas City Live Stock Exchange was an unincorporated volunteer association of men, doing business at its stock yards, situated partly in Kansas City, Missouri, and partly across the line separating Kansas City, Missouri, from Kansas City, Kansas. The business of its members was to receive individually consignments of cattle, hogs, and other live stock from owners of the same, not only in the States of Missouri and Kansas, but also in other States and Territories, and to feed such stock, and to prepare it for the market, to dispose of the same, to receive the proceeds thereof from the purchasers, and to pay the owners their proportion of such proceeds, after deducting charges, expenses and advances. The members were individually in the habit of soliciting consignments from the owners of such stock, and of making them advances thereon. The rules of the association forbade members from buying live stock from a commission merchant in Kansas City, not a member of the exchange. They also fixed the commission for selling such live stock, prohibited the employment of agents to solicit consignments except upon a stipulated salary, and forbade the sending of prepaid telegrams or telephone messages, with information as to the condition of the markets. It was also provided that no member should transact business with any person vio-

Statement of the Case.

lating the rules and regulations, or with an expelled or suspended member after notice of such violation. *Held*, that the situation of the yards, partly in Kansas and partly in Missouri, was a fact without any weight; that such business or occupation of the several members of the association was not interstate commerce, within the meaning of the act of July 2, 1890, c. 647, "to protect trade and commerce against unlawful restraints and monopolies;" and that that act does not cover, and was not intended to cover, such kind of agreements.

THIS suit was commenced by the United States attorney for the District of Kansas, acting under the direction and by the authority of the Attorney General of the United States, against Henry Hopkins and the other defendants, residents of the State of Kansas and members of a voluntary unincorporated association, known and designated as the Kansas City Live Stock Exchange. The purpose of the action is to obtain the dissolution of the exchange, and to perpetually enjoin the members from entering into or from continuing in any combination of a like character.

As a foundation for the relief sought it was alleged in the bill that the members of this association, known as the Kansas City Live Stock Exchange, have adopted articles of association, rules and by-laws which they have agreed to be bound by; that the business of the exchange is carried on and conducted by a board of directors at the Kansas City stock yards, which are situated partly in Kansas City in the State of Missouri and partly in Kansas City in the State of Kansas, the building owned by the stock yards company being located one half of it in the State of Missouri and the other half in the State of Kansas, and half of the defendants have offices and transact business in these stock yards and in that part of the building which is within the State of Kansas, and the other half in that part of the building which is in the State of Missouri; that the Kansas City Stock Yards Company is a corporation owning the stock yards, where the business is done by the members of the exchange; that substantially all the business transacted in the matter of receiving, buying, selling and handling their live stock at Kansas City is carried on by the defendants herein and by the other members of the exchange as commission merchants, and that large numbers of the live stock, consisting

of cattle and hogs and sheep bought and sold and handled at the stock yards by the defendants and their fellow members in the exchange, are shipped from the States of Nebraska, Colorado, Texas, Missouri, Iowa, and Kansas, and the Territories of Oklahoma, Arizona and New Mexico; that when this stock is received at the stock yards it is sold by the defendants, members of the exchange, to the various packing houses situated at Kansas City, Missouri, and Kansas City, Kansas, and it is also sold for shipment to the various other markets, particularly Chicago, St. Louis and New York; that vast numbers of cattle, hogs and other live stock are received annually at the stock yards and handled by the members of the exchange.

The bill also alleges that large numbers of the live stock sold at the stock yards by the defendants are incumbered by mortgages thereon, executed by their owners in the various States and Territories, which mortgages have been given to various defendants as security for money advanced by them to the different owners to enable them to feed and prepare the cattle for market, and that when the live stock so mortgaged are ready for shipment, they are sent to the defendants who have advanced the money and received the mortgages, and on the sale of the stock the amount of these advances and interest is deducted from the proceeds of the sale of the cattle by the commission merchants owning the mortgages; that ninety per cent of the members of the exchange make such advances, and that the market is largely sustained by means of the money thus advanced to the cattle raisers by the defendants, and that Kansas City is the only place for many miles about, which constitutes an available market for the purchase and sale of live stock from the large territory located in the States and Territories already named; that it is the custom of the owners of the cattle, many of them living in different states, and who consign their stock to the Kansas City stock yards for sale to draw drafts on the commission merchants to whom the live stock is consigned, which the consignors attach to the bill of lading issued by the carrier, and the money on these drafts is advanced by the local banks throughout the western States

and Territories. These drafts are paid by the consignees and the proceeds remitted to the various owners through the banks.

The business thus conducted is alleged to be interstate commerce, and it is further alleged that if the person to whom the live stock is consigned at Kansas City is not a member of the exchange, he is not permitted to and cannot sell or dispose of the stock at the Kansas City market, for the reason that the defendants, and all the other commission merchants, members of the exchange, refuse to buy live stock or in any manner negotiate or deal with or buy from a person or commission merchant who is not a member of the exchange, and thus the owner of live stock shipped to the Kansas City market is compelled to re-ship the same to other markets, and by reason of the unlawful combination existing among the defendants and the other members of the exchange the owner is prevented from delivering this stock at the Kansas City stock yards, and the sale of stock is thereby hindered and delayed, entailing extra expense and loss to the shipper, and placing an obstruction and embargo on the marketing of all live stock shipped from the States and Territories to the Kansas City market which is not consigned to the stock yards company or to the defendants, or some of them, members of the stock exchange.

It is alleged that the defendants, as members of the exchange, have adopted certain rules, among them being rules 9 and 16, which are particularly alleged to be in restraint of trade and commerce between the States, and intended to create a monopoly, in contravention of the laws of the United States in that behalf.

Rule 9 provides as follows:

"SECTION 1. Commissions charged by members of this association for selling live stock shall not be less than the following named rates."

Sections 2, 3, 4, 5, 6 and 7 relate to the amounts of such commissions, and it is alleged that in some instances the commissions are greater than had theretofore been paid.

Section 8 permits the members to handle the business of

non-resident commission firms when the stock is consigned directly to or from such firm, at half the rates fixed by the rule, provided the non-resident commission firms are established at the markets named in the section.

Section 10 prohibits the employment of any agent, solicitor or employé except upon a stipulated salary not contingent upon the commissions earned, and it provides that not more than three solicitors shall be employed at one time by a commission firm or corporation, resident or non-resident of Kansas City.

Section 11 forbids any member of the exchange from sending or causing to be sent a prepaid telegram or telephone message quoting the markets or giving information as to the condition of the same, under the penalty of a fine as therein stated. The rule, however, permits prepaid messages to be sent to shippers quoting actual sales of their stock on the date made; also to parties desiring to make purchases on the market.

Rule 16 provides, in section 1, "That no member of the exchange shall transact business with any persons violating any of the rules or regulations of the exchange, or with an expelled or suspended member after notice of such violation, suspension or expulsion shall have been issued by the secretary or board of directors of the exchange."

It is alleged that the defendants in adopting these rules and in forming the exchange and carrying out the same have violated and are violating the statute of the United States, approved July 2, 1890, c. 647, 26 Stat. 209, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and it is charged that it was the purpose of the defendants, in organizing the exchange and in adopting the rules mentioned, to prevent the shipment or consignment of any live stock to the Kansas City market unless it was shipped or consigned to the Kansas City stock yards and to some one or other of the defendants, members of the exchange, and to compel the shippers of live stock from other States and from the Territories to pay to the defendants the commissions and charges provided for in rule 9, and to prevent such shippers

from placing their property on sale at the Kansas City market unless these commissions were paid.

The answer of the defendants admitted their forming the exchange and becoming members thereof, and adopting, among others, the rules specially mentioned in complainants' bill. They denied that the exchange itself engaged in any business whatever, and alleged that it existed simply in order to prescribe rules and provide facilities for the transaction of business by the members thereof, and to govern them by such rules and regulations as have been evolved and sanctioned by the developments of commerce, and which are universally recognized to be just and fair to all concerned.

It was further set up in the answer that each member of the organization was in fact left free to compete in every manner, and by all means recognized to be fair and just, for his share of the business which comes to the point at which the members of the organization do business; that in adopting their rules they followed in all substantial respects the provisions which had been made upon the same subject respectively by the exchanges theretofore established at Chicago and East St. Louis, Illinois, and which have been since established at St. Louis, Omaha, Indianapolis, Buffalo, Sioux City and Fort Worth; and that the exchange at no time refused to admit as a member any reputable person who was willing to comply with the conditions of membership and to abide by the rules of the organization.

Various allegations in the bill as to the effect of the organization in precluding any sales or purchases of cattle other than by its members are denied.

The defendants also deny that the exercise of their occupation as commission merchants, doing business as members of the exchange, constitutes or amounts to interstate commerce, within the meaning of the Constitution or laws of the United States. They allege that they have no part in or control over the disposition of the live stock sold by them to others, nor of live stock purchased by them as commission merchants acting for others. They allege that the stock yards company permits any person whatsoever to transact business at its yards who

will pay the established charges of that company for its services, and that in point of fact a very large part of the business done at said yards is transacted by persons who are not members of the exchange, and without the interposition of such members. It is also alleged in their answer that they are under no obligations to extend the privileges of the exchange to a person who is not a member thereof, who has violated its rules and been suspended from membership, and who has voluntarily withdrawn therefrom, and announced his purpose to carry on his business as a competitor of the members of such exchange, to the destruction of said organization and its rules and to the injury of his competitors.

It is also set up that defendants cannot be compelled to deal with a non-member of their organization, or a person violating its rules, or with one who has been suspended for such violation, or who has withdrawn therefrom, or who has announced his intention to destroy said organization and to compete with the members thereof, and the defendants allege that they cannot be compelled to deal with any person whatsoever, and that they had a right to establish said exchange, and now have the right to maintain the same, and to require the observance of its rules and regulations on the part of their associates, so long as they desire to retain the privileges of membership in the body. They allege that their rules are in harmony with the rules and regulations of commercial exchanges which have existed for more than a hundred years, and which are now to be found in every State almost in the United States, and throughout the world, and that such rules and regulations are in all respects legal and binding. They deny all general and special allegations of illegal agreements, combinations or conspiracies to violate any law of the United States, or of the State of Kansas.

The complainants, in addition to their bill, used several affidavits, the tendency of which was to show that by virtue of the adoption of rules 9 and 16, the members of the exchange refused to deal with one who had violated a rule and had been suspended by reason thereof, and that by reason of this refusal to do business, the member thus suspended was

substantially incapacitated from carrying on his business as a commission merchant, and that by this combination defendants, in forming such rule and in adhering to it, have greatly injured the business of such member.

The defendants read counter-affidavits for the purpose of sustaining their answer, which were replied to by the complainants filing affidavits in rebuttal, and upon these affidavits and the pleadings above described an application for an injunction was made to the Circuit Court of the United States for the District of Kansas, First Division. That court, after argument, granted an injunction restraining the defendants from combining by contract, express or implied, so as by their acts, conduct or words to interfere with, hinder or impede others in shipping, trading, selling or buying live stock that is received from the States and Territories at the stock yards in Kansas City, Missouri, and Kansas City, Kansas; also enjoining them from acting under the rules of the exchange known as rules 9 and 16, and from attempting to impose any fines or penalties upon members for trading or offering to trade with any person respecting the purchase and sale of any live stock; and also from discriminating in favor of any member of the exchange because of such membership, and especially from discriminating against any person trading at the stock yards, and from refusing, by united or concerted action, or by word, persuasion, threat or by other means, to deal or trade with persons with respect to such live stock who are not members of the association, because they are not members of such association, or in any manner from interfering with the right and freedom of all and any persons trading or desiring to trade in such live stock at the stock yards, the same as if the exchange did not exist. The defendants were also enjoined from agreeing or attempting to limit the right of any person in business at the Kansas City stock yards to employ labor or assistance in soliciting shipments of live stock from other States or Territories, and from enforcing any agreement not to send prepaid telegrams from the stock yards to any other State or Territory.

The District Judge delivered an opinion upon granting the

injunction, which will be found reported in 82 Fed. Rep. 529. From the order granting it an appeal was taken by the defendants to the United States Circuit Court of Appeals for the Eighth Circuit, which court certified to this court certain questions under the provisions of section 6 of the act of March 3, 1891, and thereupon a writ of certiorari was issued from this court, and the whole case brought here for decision.

Mr. L. C Krauthoff for Hopkins and others.

Mr. John S. Miller filed a brief for same.

Mr. Gustavus A. Koerner filed a brief for same.

Mr. Samuel W. Moore for the United States. *Mr. Solicitor General* was on his brief.

Mr. Justice Peckham, after stating the case, delivered the opinion of the court.

The relief sought in this case is based exclusively on the act of Congress approved July 2, 1890, c. 647, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly spoken of as the Anti-Trust act. 26 Stat. 209.

The act has reference only to that trade or commerce which exists, or may exist, among the several States or with foreign nations, and has no application whatever to any other trade or commerce.

The question meeting us at the threshold, therefore, in this case is, what is the nature of the business of the defendants, and are the by-laws, or any subdivision of them above referred to, in their direct effect in restraint of trade or commerce among the several States or with foreign nations; or does the case made by the bill and answer show that any one of the above defendants has monopolized, or attempted to monopolize, or combined or conspired with other persons to monopolize, any part of the trade or commerce among the several States or with foreign nations?

Opinion of the Court.

That part of the bill which alleges that no one is permitted to do business at the cattle market at Kansas City unless he is a member of this exchange, does not mean that there is any regulation at the stock yards by which one who is not a member of the exchange is prevented from doing business, although ready to pay the established charges of the stock yards company for its services; but it simply means that by reason of the members of the exchange refusing to do business with those who are not members the non-member cannot obtain the facilities of a market for his cattle such as the members of the exchange enjoy. It is unnecessary at present to discuss the question whether there is any illegality in a combination of business men who are members of an exchange not to do business with those who are not members thereof, even if the business done were in regard to interstate commerce. The first inquiry to be made is as to the character of the business in which defendants are engaged, and if it be not interstate commerce, the validity of this agreement not to transact their business with non-members does not come before us for decision.

We come, therefore, to the inquiry as to the nature of the business or occupation that the defendants are engaged in. Is it interstate commerce in the sense of that word as it has been used and understood in the decisions of this court? Or is it a business which is an aid or facility to commerce, and which, if it affect interstate commerce at all, does so only in an indirect and incidental manner?

As set forth in the record, the main facts are that the defendants have entered into a voluntary association for the purpose of thereby the better conducting their business, and that after they entered into such association they still continued their individual business in full competition with each other, and that the association itself, as an association, does no business whatever, but is simply a means by and through which the individual members who have become thus associated are the better enabled to transact their business; to maintain and uphold a proper way of doing it; and to create the means for preserving business integrity in the transaction

of the business itself. The business of defendants is primarily and substantially the buying and selling, in their character as commission merchants, at the stock yards in Kansas City, live stock which has been consigned to some of them for the purpose of sale, and the rendering of an account of the proceeds arising therefrom. The sale or purchase of live stock as commission merchants at Kansas City is the business done, and its character is not altered because the larger proportion of the purchases and sales may be of live stock sent into the State from other States or from the Territories. Where the stock came from or where it may ultimately go after a sale or purchase, procured through the services of one of the defendants at the Kansas City stock yards, is not the substantial factor in the case. The character of the business of defendants must, in this case, be determined by the facts occurring at that city.

If an owner of cattle in Nebraska accompanied them to Kansas City and there personally employed one of these defendants to sell the cattle at the stock yards for him on commission, could it be properly said that such defendant in conducting the sale for his principal was engaged in interstate commerce? Or that an agreement between himself and others not to render such services for less than a certain sum was a contract in restraint of interstate trade or commerce? We think not. On the contrary, we regard the services as collateral to such commerce and in the nature of a local aid or facility provided for the cattle owner towards the accomplishment of his purpose to sell them; and an agreement among those who render the services relating to the terms upon which they will render them is not a contract in restraint of interstate trade or commerce.

Is the true character of the transaction altered when the owner, instead of coming from Nebraska with his cattle, sends them by a common carrier consigned to one of the defendants at Kansas City with directions to sell the cattle and render him an account of the proceeds? The services rendered are the same in both instances, only in one case they are rendered under a verbal contract made at Kansas

City personally, while in the other they are rendered under written instructions from the owner given in another State. This difference in the manner of making the contract for the services cannot alter the nature of the services themselves. If the person, under the circumstances stated, who makes a sale of the cattle for the owner by virtue of a personal employment at Kansas City, is not engaged in interstate commerce when he makes such sale, we regard it as clear that he is not so engaged, although he has been employed by means of a written communication from the owner of the cattle in another State.

The by-laws of the exchange relate to the business of its members who are commission merchants at Kansas City, and some of these by-laws, it is claimed by the Government, are in violation of the act of Congress, because they are in restraint of that business which is in truth interstate commerce. That one of the by-laws which relates to the commissions to be charged for selling the various kinds of stock, is particularly cited as a violation of the act. In connection with that by-law it will be well to examine with some detail the nature of the defendants' business.

It is urged that they are active promoters of the business of selling cattle upon consignment from their owners in other States, and that in order to secure the business the defendants send their agents into other States to the owners of the cattle to solicit the business from them; that the defendants also lend money to the cattle owners and take back mortgages upon the cattle as security for the loan; that they make advances of a portion of the purchase price of the cattle to be sold, by means of the payment of drafts drawn upon them by the shippers of the cattle in another State at the time of the shipment. All these things, it is said, constitute intercourse and traffic between the citizens of different States, and hence the by-law in question operates upon and affects commerce between the States.

The facts stated do not, in our judgment, in any degree alter the nature of the services performed by the defendants, nor do they render that particular by-law void as in restraint

of interstate trade or commerce because it provides for a minimum amount of commissions for the sale of the cattle.

Objections are taken to other parts of the by-laws which we will notice hereafter.

Notwithstanding these various matters undertaken by defendants, we must keep our attention upon the real business transacted by them, and in regard to which the section of the by-law complained of is made. The section amounts to an agreement, and it relates to charges made for services performed in selling cattle upon commission at Kansas City. The charges relate to that business alone. In order to obtain it the defendants advance money to the cattle owner; they pay his drafts, and they aid him to keep his cattle and make them fit for the market. All this is done as a means towards an end; as an inducement to the cattle owner to give one of the defendants the business of selling the cattle for him when the owner shall finally determine to sell them. That business is not altered in character because of the various things done by defendants for the cattle owner in order to secure it. The competition among the defendants and others who may be engaged in it, to obtain the business, results in their sending outside the city, to cattle owners, to urge them by distinct and various inducements to send their cattle to one of the defendants to sell for them. In this view it is immaterial over how many States the defendants may themselves or by their agents travel in order to thereby secure the business. They do not purchase the cattle themselves; they do not transport them. They receive them at Kansas City, and the complaint made is in regard to the agreements for charges for the services at that point in selling the cattle for the owner. Thus everything at last centres at the market at Kansas City, and the charges are for services there, and there only, performed.

The selling of an article at its destination, which has been sent from another State, while it may be regarded as an interstate sale and one which the importer was entitled to make, yet the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make them a portion of interstate commerce, and a

combination in regard to the amount to be charged for such service is not, therefore, a combination in restraint of that trade or commerce. Granting that the cattle themselves, because coming from another State, are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade. The commission agent in selling the cattle for their owner simply aids him in finding a market; but the facilities thus afforded the owner by the agent are not of such a nature as to thereby make that agent an individual engaged in interstate commerce, nor is his agreement with others engaged in the same business, as to the terms upon which they would provide these facilities, rendered void as a contract in restraint of that commerce. Even all agreements among buyers of cattle from other States are not necessarily a violation of the act, although such agreements may undoubtedly affect that commerce.

The charges of the agent on account of his services are nothing more than charges for aids or facilities furnished the owner whereby his object may be the more easily and readily accomplished. Charges for the transportation of cattle between different States are charges for doing something which is one of the forms of and which itself constitutes interstate trade or commerce, while charges or commissions based upon services performed for the owner in effecting the sale of the cattle are not directly connected with, as forming part of, interstate commerce, although the cattle may have come from another State. Charges for services of this nature do not immediately touch or act upon nor do they directly affect the subject of the transportation. Indirectly and as an incident, they may enhance the cost to the owner of the cattle in finding a market, or they may add to the price paid by a purchaser, but they are not charges which are directly laid upon the article in the course of transportation, and which are charges upon the commerce itself; they are charges for the

facilities given or provided the owner in the course of the movement from the home *situs* of the article to the place and point where it is sold.

The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate. Charges for such facilities as we have already mentioned are not a restraint upon that trade, although the total cost of marketing a subject thereof may be thereby increased. Charges for facilities furnished have been held not a regulation of commerce, even when made for services rendered or as compensation for benefits conferred. *Sands* v. *Manistee River Improvement Co.*, 123 U. S. 288; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 329, 330; *Kentucky & Indiana Bridge Company* v. *Louisville &c. Railroad*, 37 Fed. Rep. 567.

To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act. The State may levy a tax upon the earnings of a commission merchant which were realized out of the sales of property belonging to non-residents, and such a tax is not one upon interstate commerce because it affects it only incidentally and remotely although certainly. *Ficklen* v. *Shelby County Taxing District*, 145 U. S. 1. Many agreements suggest themselves which relate only to facilities furnished commerce, or else touch it only in an indirect way, while possibly enhancing the cost of transacting the business, and which at the same time we would not think of as agreements in restraint of interstate trade or commerce. They are agreements which in their effect operate in furtherance and in aid of commerce by providing for it facilities, conveniences, privileges or services, but which do not directly relate to charges for its transportation, nor to any other form of interstate commerce. To hold all such agreements void would in our judgment improperly extend the act to matters which are not of an interstate commercial nature.

It is not difficult to imagine agreements of the character above indicated. For example, cattle, when transported long distances by rail, require rest, food and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception. Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract even if the lands, or some of them, were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain compensation come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facilities, and that its charges for transportation are enhanced because of an agreement among the landowners along the line not to lease their lands to the company for such purposes for less than a named sum, could it be successfully contended that the agreement of the landowners among themselves would be a violation of the act as being in restraint of interstate trade or commerce? Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between the States? Would an agreement among dealers in horse blankets not to sell them for less than a certain price be open to the charge of a violation of the act because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced? Would an agreement among cattle drivers not to drive the cattle after their arrival at the railroad depot at their place of destination to the cattle yards where sold, for less than a minimum sum, come within the statute? Would an agreement among them-

selves by locomotive engineers, firemen or trainmen engaged in the service of an interstate railroad not to work for less than a certain named compensation be illegal because the cost of transporting interstate freight would be thereby enhanced? Agreements similar to these might be indefinitely suggested.

In our opinion all these queries should be answered in the negative. The indirect effect of the agreements mentioned might be to enhance the cost of marketing the cattle, but the agreements themselves would not necessarily for that reason be in restraint of interstate trade or commerce. As their effect is either indirect or else they relate to charges for the use of facilities furnished, the agreements instanced would be valid provided the charges agreed upon were reasonable. The effect upon the commerce spoken of must be direct and proximate. *New York, Lake Erie & Western Railroad* v. *Pennsylvania*, 158 U. S. 431, 439.

An agreement may in a variety of ways affect interstate commerce, just as state legislation may, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct. *Sherlock* v. *Alling*, 93 U. S. 99–103; *United States* v. *E. C. Knight Company*, 156 U. S. 1, 16; *Pittsburg & Southern Coal Co.* v. *Louisiana*, 156 U. S. 590, 597; *Transportation Company* v. *Parkersburg*, 107 U. S. 691; *Ficklen* v. *Shelby County*, *supra*. Reasonable charges for the use of a facility for the transportation of interstate commerce have heretofore been regarded as valid in this court, even though such charges might necessarily enhance the cost of doing the business. *Packet Company* v. *St. Louis*, 100 U. S. 423; *Packet Company* v. *Catlettsburg*, 105 U. S. 559; *Transportation Company* v. *Parkersburg*, 107 U. S. 691; *Huse* v. *Glover*, 119 U. S. 543; *Ouachita Packet Company* v. *Aiken*, 121 U. S. 444; *St. Louis* v. *Western Union Telegraph Company*, 148 U. S. 92. An agreement among the owners of such facilities, to charge not less than a minimum rate for their use, cannot be condemned as illegal under the act of Congress.

The fact that the above cited cases relate to tangible property, the use of which was charged for, does not alter the

reasoning upon which the decisions were placed. The charges were held valid because they related to facilities furnished in aid of the commerce and which did not constitute a regulation thereof. Facilities may consist in privileges or conveniences provided and made use of or in services rendered in aid of commerce, as well as in the use of tangible property, and so long as they are facilities and the charges not unreasonable an agreement relating to their amount is not invalid. The cattle owner has no constitutional right to the services of the commission agent to aid him in the sale of his cattle and the agent has the right to say upon what terms he will render them, and he has the equal right, so far as the act of Congress is concerned, to agree with others in his business not to render those services unless for a certain charge. The services are no part of the commerce in the cattle.

In *Brown* v. *Maryland*, 12 Wheat. 419, Chief Justice Marshall, while maintaining the right of an importer to sell his article in the original package, free from any tax, recognized the distinction between the importer selling the article himself and employing an auctioneer to do it for him, and he said that in the latter case the importer could not object to paying for such services as for any other, and that the right to sell might very well be annexed to importation without annexing to it also the privilege of using auctioneers, and thus to make the sale in a peculiar way. In such case a tax upon the auctioneer's license would be valid.

The same view is enforced in *Emert* v. *Missouri*, 156 U. S. 296.

The right of the cattle owners themselves to sell their own cattle is not affected or touched by the agreement in question, while the privilege of having their cattle sold for them at the market place frequented by defendants, and with the aid of one of them, is a privilege which they are charged for, and which is not annexed to their right to sell their own cattle.

It is possible that exorbitant charges for the use of these facilities might have similar effect as a burden on commerce that a charge upon commerce itself might have. In a case

like that the remedy would probably be forthcoming. *Transportation Co.* v. *Parkersburg*, 107 U. S. 691. As was said by Mr. Justice Field, in *Sands* v. *Manistee River Improvement Co.*, 123 U. S. 288, 294, 295, "should there be any gross injustice in the rate of tolls fixed, it would not in our system of government, remain long uncorrected."

But whether the charges are or are not exorbitant is a question primarily of local law, at least in the absence of any superior or paramount law providing for reasonable charges. *Transportation Co.* v. *Parkersburg*, 107 U. S. 691. This case does not involve that question.

If charges of the nature described do not amount to a regulation of interstate trade or commerce because they touch it only in an indirect and remote way, or else because they are in the nature of compensation for the use of property or privileges as a mere facility for that commerce, it would for a like reason seem clear that agreements relating to the amounts of such charges among those who furnish the privileges or facilities are not in restraint of that kind of trade. While the indirect effect of the agreements may be to enhance the expense to those engaged in the business, yet as the agreements are in regard to compensation for privileges accorded for services rendered as a facility to commerce or trade, they are not illegal as a restraint thereon.

The facilities or privileges offered by the defendants are apparent and valuable. The cattle owner has the use of a place for his cattle furnished by the defendants and all the facilities arising from a market where the sales and purchases are conducted under the auspices of the association of which the defendants are members, and in a manner the least troublesome to the owners and at the same time the most expeditious and effective. Each of these defendants has the right to have the cattle which are consigned to him taken to the cattle yards, where, by virtue of the arrangements made by defendants with the owners of the yards, the cattle are placed in pens, watered and fed, if necessary, and a sale effected at the earliest moment. It is these facilities and services which are paid for by a commission on the sale effected by the commission men.

If, as is claimed, the commission men sometimes own the cattle they sell, then the rules do not apply, for they relate to charges made for selling cattle upon commission and not at all to sales of cattle by their owners.

Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted. *Welton* v. *Missouri*, 91 U. S. 275; *Mobile County* v. *Kimball*, 102 U. S. 691; *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S. 196; *Hooper* v. *California*, 155 U. S. 648, 653; *United States* v. *E. C. Knight Company*, 156 U. S. 1.

But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility.

The services of members of the different stock and produce exchanges throughout the country in effecting sales of the articles they deal in are of a similar nature. Members of the New York Stock Exchange buy and sell shares of stock of railroads and other corporations, and the property represented by such shares of stock is situated all over the country. Is a broker whose principal lives outside of New York State, and who sends him the shares of stock or the bonds of a corporation created and doing business in another State, for sale, engaged in interstate commerce? If he is employed to purchase stock or bonds in a like corporation under the same circumstances, is he then engaged in the business of interstate commerce? It may, perhaps, be answered that stocks or

bonds are not commodities, and that dealers therein are not engaged in commerce. Whether it is an answer to the question need not be considered, for we will take the case of the New York Produce Exchange. Is a member of that body to whom a cargo of grain is consigned from a western State to be sold engaged in interstate commerce when he performs the service of selling the article upon its arrival in New York and transmitting the proceeds of the sale less his commissions? Is a New Orleans cotton broker who is a member of the Cotton Exchange of that city, and who receives consignments of cotton from different States and sells them on 'change in New Orleans and accounts to his consignors for the proceeds of such sales less his commission, engaged in interstate commerce? Is the character of the business altered in either case by the fact that the broker has advanced moneys to the owner of the article and taken a mortgage thereon as his security? We understand we are in these queries assuming substantially the same facts as those which are contained in the case before us, and if these defendants are engaged in interstate commerce because of their services in the sale of cattle which may come from other States, then the same must be said in regard to the members of the other exchanges above referred to. We think it would be an entirely novel view of the situation if all the members of these different exchanges throughout the country were to be regarded as engaged in interstate commerce, because they sell things for their principals which come from States different from the one in which the exchange is situated and the sale made.

The theory upon which we think the by-law or agreement regarding commissions is not a violation of the statute operates also in the case of the other provisions of the by-laws. The answer in regard to all objections is, the defendants are not engaged in interstate commerce.

But special weight is attached to the objection raised to section 11 of rule 9 of the by-laws, which provides against sending prepaid telegrams as set forth in the statement of facts herein. It is urged that the purpose of this section is to prevent the sending of prepaid telegrams by the defendants

to their various customers in the different States tributary to the Kansas City market, and that the section is a part of the contract between the members of the exchange, and is clearly an attempt to regulate and restrict the sending of messages by telegraph and telephone between citizens of the various States and Territories, and operates upon and directly affects the interstate business of communicating between points in different States by telegraph or telephone.

An agreement among the defendants to abstain from telegraphing in certain circumstances and for certain purposes is so clearly not an attempt to regulate or restrain the general sending of telegrams that it would seem unnecessary to argue the question. An agreement among business men not to send telegrams in regard to their business in certain contingencies, when the agreement is entered into only for the purpose of regulating the business of the individuals, is not a direct attempt to affect the business of the telegraph company, and has no direct effect thereon. Although communication by telegraph may be commerce, and if carried on between different States may be commerce among the several States, yet an agreement or by-law of the nature of the one under consideration is not a burden or a regulation of or a duty laid upon the telegraph company, and was clearly not entered into for the purpose of affecting in the slightest degree the company itself or its transaction of interstate commerce.

The argument of counsel in behalf of the United States, that because none of the States or Territories could enact any law interfering with or abridging the right of persons in Kansas or Missouri to send prepaid telegrams of the nature in question, therefore an agreement to that effect entered into between business men as a means towards the proper transaction of their legitimate business would be void, is, as we think, entirely unsound. The conclusion does not follow from the facts stated. The statute might be illegal as an improper attempt to interfere with the liberty of transacting legitimate business enjoyed by the citizen, while the agreement among business men for the better conduct of their own

business, as they think, to refrain from using the telegraph for certain purposes, is a matter purely for their own consideration. There is no similarity between the two cases, and the principle existing in the one is wholly absent in the other. The private agreement does not, as we have said, regulate commerce or impose any impediment upon it or tax it. Communication by telegraph is free from any burden so far as this agreement is concerned, and no restrictions are placed on the commerce itself.

The act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it. We have no idea that the act covers or was intended to cover such kinds of agreements.

The next by-law which complainants object to is section 10 of the same rule 9, which prohibits the hiring of a solicitor except upon a stipulated salary not contingent upon commissions earned, and which provides that no more than three solicitors shall be employed at one time by a commission firm or corporation.

The claim is that these solicitors are engaged in interstate commerce, and that such commerce must be free from any state legislation and free from the control or restraint by any person or combination of persons. They also object that the rule is an unlawful inhibition upon the privilege possessed by each person under the Constitution to make lawful contracts in the furtherance of his business, and they allege that in this respect these members have surrendered their dominion over their own business and permitted the exchange to establish a species of regency, and that the by-law in regard to the employment of solicitors is one which directly affects interstate commerce.

McCall v. *California*, 136 U. S. 104, is cited for the proposition that the solicitors employed by these defendants are engaged in interstate commerce. In that case the railroad company was itself engaged in such commerce, and its agent in California was taxed by reason of his business in soliciting

for his company that which was interstate commerce. The fact that he did not sell tickets or receive or pay out money on account of it was not regarded as material. His principal was a common carrier, engaged in interstate commerce, and he was engaged in that commerce because he was soliciting for the transportation of passengers by that company through the different States in which the railroad ran from the State of California. In the case before us the defendants are not employed in interstate commerce but are simply engaged in the performance of duties or services relating to stock upon its arrival at Kansas City. We do not think it can be properly said that the agents of the defendants whom they send out to solicit the various owners of stock to consign the cattle to one of the defendants for sale are thereby themselves engaged in interstate commerce. They are simply soliciting the various stock owners to consign the stock owned by them to particular defendants at Kansas City, and until the arrival of the stock at that point and the delivery by the transportation company no duties of an interstate-commerce nature arise to be performed by the defendants. As the business they do is not interstate commerce, the business of their agents in soliciting others to give them such business is not itself interstate commerce. Not being engaged in interstate commerce, the agreement of the defendants through the by-law in question, restricting the number of solicitors to three, does not restrain that commerce, and does not therefore violate the act of Congress under discussion.

The position of the solicitors is entirely different from that of drummers who are travelling through the several States for the purpose of getting orders for the purchase of property. It was said in *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, that the negotiation of sales of goods which are in another State for the purpose of introducing them into the State in which the negotiation is made is interstate commerce.

But the solicitors for these defendants have no property or goods for sale, and their only duty is to ask or induce those who own the property to agree that when they send it to

market for sale they will consign it to the solicitor's principal, so that he may perform such services as may be necessary to sell the stock for them and account to them for the proceeds thereof. Unlike the drummer who contracts in one State for the sale of goods which are in another, and which are to be thereafter delivered in the State in which the contract is made, the solicitor in this case has no goods or samples of goods and negotiates no sales, and merely seeks to exact a promise from the owner of property that when he does wish to sell he will consign to and sell the property through the solicitor's principal. There is no interstate commerce in that business.

Hooper v. *California*, 155 U. S. 648, is another illustration of the meaning of the term "commerce," as used in the Constitution of the United States. In that case, contracts of marine insurance are stated not to appertain to interstate commerce, and cases are cited upon the nature of the contract of insurance generally at page 653 of the opinion.

It is also to be remarked that the effect of the agreement as to the number of solicitors to be employed by defendants can only be remote and indirect upon interstate commerce. The number of solicitors employed has no direct effect upon the number of cattle transported from State to State. The solicitors do not solicit transportation of the cattle. They are not in the interest of the transportation company, and the transportation is an incident only. They solicit a consignment of cattle to their principals, so that the latter may sell them on commission and thus transact their local business. The transportation would take place any way and the cattle be consigned for sale by some one of the defendants or by others engaged in the business. It is not a matter of transportation but one of agreement as to who shall render the services of selling the cattle for their owner at the place of destination.

We say nothing against the constitutional right of each one of the defendants and each person doing business at the Kansas City stock yards to send into distant States and Territories as many solicitors as the business of each will warrant. This

original right is not denied or questioned. But cannot the citizen, for what he thinks good reason, contract to curtail that right? To say that a State would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a State may do is one thing, and what parties may contract voluntarily to do among themselves is quite another thing.

The liberty of contract as referred to in *Allgeyer* v. *Louisiana*, 165 U. S. 578, is the liberty of the individual to be free, under certain circumstances, from the restraint of legislative control with regard to all his contracts, but the case has no reference to the right of individuals to sometimes enter into those voluntary contracts by which their rights and duties may properly be measured and defined and in many cases greatly restrained and limited.

We agree with the court below in thinking there is not the slightest materiality in the fact that the state line runs through the stock yards in question, resulting in some of the pens in which the stock may be confined being partly in the State of Kansas and partly in the State of Missouri, and that sales may be made of a lot of stock which may be at the time partly in one State and partly in the other. The erection of the building and the putting up of the stock pens upon the ground through which the state line ran were matters of no moment so far as any question of interstate commerce is concerned. The character of the business done is not in the least altered by these immaterial and incidental facts.

It follows from what has been said that the complainants have failed to show the defendants guilty of any violations of the act of Congress, because it does not appear that the defendants are engaged in interstate commerce, or that any agreements or contracts made by them and relating to the conduct of their business are in restraint of any such commerce.

Whether they refused to transact business which is not interstate commerce, except with those who are members of the exchange, and whether such refusal is justifiable or not,

are questions not open for discussion here. As defendants' actions or agreements are not a violation of the act of Congress, the complainants have failed in their case, and the order for the injunction must be

Reversed and the case remitted to the Circuit Court of the United States for the District of Kansas, First Division, with directions to dismiss the bill with costs.

MR. JUSTICE HARLAN dissented.

MR. JUSTICE MCKENNA took no part in the decision of this case.